United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

760

JOINT APPENDIX

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,222

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor,

APPEAL FROM DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

VOL. I (Pages 1-450)

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 1 3 1967

Nathan J. Paulson

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JA 1

1

LAW OFFICES
KRIEGER & JORGENSEN
2011 EYE STREET, N. W.
WASHINGTON 6, D. C.

SEYMOUR KRIEGER (1913-1960)
NORMAN E. JORGENSEN
LOUIS SCHWARTZ
ROBERT A. WOODS

TELEPHONE
337-6313

October 4, 1961

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OCT 4 1961
F. C. C.
OFFICE OF THE SECRETARY

Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Dear Mr. Waple:

On behalf of F. L. Crowder d/b/a Harriman Broadcasting Co. we are filing herewith on FCC Form 301 in triplicate an application for a new standard broadcast station in Harriman, Tennessee.

Two extra copies of Section V-G are also included in this application.

Notice has been given by John H. Mullaney & Associates, consulting engineers for the applicant, to the Federal Aviation Agency.

If there are any questions in connection with this matter, it is requested that they be referred to the undersigned.

Very truly yours,

KRIEGER & JORGENSEN

By Norman E. Jorgensen
Norman E. Jorgensen

Attachments

Ack OCT 17 1961

FCC Form 301
March 1960

Form Approved
Budget Bureau No. 52-R014.13

Section I

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR AUTHORITY TO CONSTRUCT A NEW BROADCAST STATION OR MAKE CHANGES IN AN EXISTING BROADCAST STATION

ABB
D. Murphy 10-10-61

INSTRUCTIONS

A. This form is to be used in applying for authority to construct a new AM (standard), commercial FM (frequency modulation), or television broadcast station, or to make changes in existing broadcast stations. This form consists of this part, Section I, and the following sections:

Section II,	Legal Qualifications of Broadcast Applicant
Section III,	Financial Qualifications of Broadcast Applicant
Section IV,	Statement of Program Service of Broadcast Applicant
Section V-A,	Standard Broadcast Engineering Data
Section V-B,	FM Broadcast Engineering Data
Section V-C,	Television Broadcast Engineering Data
Section V-G,	Antenna and Site Information

B. Prepare three copies of this form and all exhibits. Swear to one copy of Section I. Prepare two additional copies (a total of five) of Section V-G and associated exhibits. File all the above with Federal Communications Commission, Washington 25, D. C.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Show date of preparation of each exhibit, antenna pattern, and map, and show date when each photograph was taken.

D. The name of the applicant stated in Section I hereof shall be the exact corporate name, if a corporation; if a partnership, the names of all partners and the name under which the partnership does business; if an unincorporated association, the name of an executive officer, his office; and the name of the association. In other Sections of the form the name need be only sufficient for identification of the applicant.

E. Information called for by this application which is already on file with the Commission *(except that called for in Section V-G)* need not be refiled in this application provided (1) the information is now on file in another application or FCC Form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any, the FCC form number, and the filing date of the application or other form containing the information and the page of paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application must be executed by applicant, if an individual; by a partner of applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 1.303, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority of attorney to act must be submitted with application.

G. Before filling out this application, the applicant should familiarize himself with the Communications Act of 1934, as amended, Parts 1, 2, 3 and 17 of the Commission's Rules and Regulations and the Standards of Good Engineering Practice.

H. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

File No. BP-15122

Name and post office address of applicant (See Instruction D)

F.L. Crowder d/b/a
Harriman Broadcasting Co.
Harriman, Tennessee

2

Send notices and communications to the following-named person at the post office address indicated if different than above

F.L. Crowder
P.O. Box 39, Livingston, Tenn.

1. Requested facilities

Frequency	Channel No.	Power in kilowatts		Minimum hours operation daily
		Night	Day	
970 kc	-	-	0.5	daytime only

Hours of operation

Unlimited Daytime only XXX Limited	Sharing with (Specify Stations) None	Other (Specify) None

Type of station (as Standard, FM, Television)
Standard broadcast

Station location

City	State
Harriman	Tennessee

2. If authority to make changes in an existing station is requested

(a) Present facilities

Frequency	Call	Channel No.	Power in kilowatts		Minimum hours operation daily
			Night	Day	

Hours of operation

Unlimited Daytime only Limited	Sharing with (Specify Stations)	Other (Specify)

Station location

City	State

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F.C.C.
OFFICE OF THE SECRETARY

(b) If this application is for changes in an existing authorization, complete Section I and any other sections necessary to show all substantial changes in information filed with the Commission in prior applications or reports. In the spaces below check Sections submitted herewith and as to Sections not submitted herewith refer to the prior application or report containing the requested information in accordance with Instruction E. (If contemplated expenditures are less than $5,000, complete paragraph 1 of Section III only. Section IV is not required for applications for minor changes not involving change in power, change in frequency, change in hours of operation, or moving from city to city.)

Section No.	Para. No.	Reference (File or Form No. and Date)
☐ Section II		
☐ Section III		
☐ Section IV		
☐ Section V		

Have there been any substantial changes in the information incorporated in this application by reference in this paragraph? Yes ☐ No ☐

3. If this application is contingent on the grant of another pending application, state name of other applicant and file number of other application.

Not contingent

FCC Form 301

Section I, Page 2

The applicant hereby waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934).

The applicant represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

All the statements made in the application and attached exhibits are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The applicant, or the undersigned on the applicant's behalf, states that he has endeavored to supply full and correct information as to all matters which are relevant to this application and that he has done so as to all matters within his own knowledge.

Dated this 30 day of September, 19 61

F.L. Crowder d/b/a
Harriman Broadcasting Co.
(Name of Applicant)

By F. L. Crowder

Individual applicant
Title

Subscribed and sworn to before me this 30 day of September, 19 61.

(SEAL)

(Notary public's seal must be affixed where the law of jurisdiction requires, otherwise state that law does not require seal.)

R.H. McLain
Notary Public

My commission expires 8-5-1962

If applicant is represented by legal or engineering counsel, state name and post office address: (Legal) N.E. Jorgensen, 2011 Eye St., N.W. Wash (6)
(Engr) John H. Mullaney & Asso., 2000 P St.,N.W. Wash(6

EXHIBITS furnished as required by this form:

Exhibit No.	Section and Para. No. of Form	Name of officer or employee (1) by whom or (2) under whose direction exhibit was prepared (show which)	Official title
1	III, 2(a)	F. L. Crowder (1)	Individual applicant
2	III, 2(b)	F. L. Crowder (1)	Individual applicant
3	III, 4	F. L. Crowder (2)	Individual applicant
4	IV, 2(b)	F. L. Crowder (1)	Individual applicant
5	IV, 7	F. L. Crowder (1)	Individual applicant
Engineering		John H. Mullaney & Assoc.	Consulting Engrs.

Broadcast Application — FEDERAL COMMUNICATIONS COMMISSION — Section II

LEGAL QUALIFICATIONS
OF BROADCAST-APPLICANT

Name of Applicant **F. L. Crowder d/b/a
Harriman Broadcasting Co.**

INSTRUCTIONS

As used in paragraphs 6 to 10 and 19 to 21, both inclusive, of Section II of this form, the words "party to this application" have the following meanings, respectively: In case of *an individual applicant,* the applicant. In case of a *partnership applicant,* all partners, including limited and silent partners. In case of a *corporate applicant,* all officers, directors, stockholders of record, persons owning the beneficial interest in any stock, subscribers to any stock, and persons who voted any of the voting stock at the last stockholders meeting. In case of *any other applicant,* all executive officers, members of the governing board, and owners or subscribers to any membership or ownership interest in the applicant. In case of an application for assignment or transfer, Section II should be completed only for the assignee or transferee, showing the ownership as it will be after the assignment or transfer has taken place. (Note: If the applicant considers that to furnish a complete answer to the paragraphs referred to would be an unreasonable burden, it may request the Commission for a waiver of the strict terms of this requirement.)

1. Applicant is (Check one): An individual ☒, a general partnership ☐, a limited partnership ☐, a corporation ☐, an unincorporated association ☐

2. If applicant is not an individual, give the State, District, Territory or Possession under the laws of which it is organized. DNA

3. Submit as Exhibit No. copies, one of which must be properly certified, of (a) if applicant is a general or limited partnership, the partnership agreement; (b) if applicant is a corporation, the articles of incorporation (or charter) and the bylaws, certified by the Secretary of State or other appropriate official; (c) if applicant is an unincorporated association, the articles of association or other legal instrument under which applicant is organized showing the purpose thereof, and the bylaws, if any. In each case, submit properly certified copies of all amendments. DNA

4. If applicant is a corporation or an unincorporated association, indicate specifically by reference to page and paragraph of the articles of incorporation or of association, the charter powers relied upon by the applicant to show that it is legally empowered to construct and operate the proposed station. If the articles of incorporation do not specifically authorize kind of business sought to be entered into, attach a statement from Secretary of State or other officer interpreting the language relied upon. DNA

5. Complete Tables I and II on pages 3 and 4.

CITIZENSHIP AND OTHER STATUTORY REQUIREMENTS (See instructions above)

6. If applicant is an individual, is the applicant a citizen of the United States; or, if applicant is not an individual, are all parties to this application citizens of the United States? Yes ☒ No ☐

If the answer is "No", state the name and citizenship of each person who is not a citizen of the United States. DNA

7. Is United States citizenship of any party to this application claimed by reason of naturalization? Yes ☐ No ☒

If so, state the name of such party, the date and place of issuance of final certificate of naturalization, certificate number, and name and location of court authorizing issuance of same. DNA

8. Is United States citizenship of any party to this application claimed by reason of naturalization of a parent? Yes ☐ No ☒

If so, state the name of such party, the name of the parent to whom the final certificate was issued, the age of the party to this application at the time the certificate was issued, and any additional facts relied on to establish citizenship, in addition to the information required by Paragraph 7 hereof. DNA

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F. C. C.
OFFICE OF THE SECRETARY

9. (a) Is applicant or any party to this application a representative of an alien or of a foreign government? Yes ☐ No ☒

(b) If applicant is a corporation, is more than 20 percent of the capital stock owned of record or may it be voted by aliens or their representatives, or by a foreign government or a representative thereof, or by any corporation organized under the laws of a foreign country? DNA Yes ☐ No ☐

(c) If applicant is a corporation and is controlled by another corporation or corporations, is more than 25 percent of the capital stock of such controlling corporation or corporations owned of record or may it be voted by aliens, their representatives, or by any corporation organized under the laws of a foreign country? DNA Yes ☐ No ☐

(d) If the answer to any of the foregoing parts of this paragraph is "Yes", submit as Exhibit No. DNA a full disclosure concerning the persons and matters involved.

10. (a) Has applicant or any party to this application had a station license revoked by order or decree of any Federal court? Yes ☐ No ☒

(b) Has the applicant or any party to this application been found guilty by a Federal court of the violation of the laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade? Yes ☐ No ☒

(c) Has the applicant or any party to this application been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize radio communications, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffice arrangements, or by any other means, or to have been using unfair methods of competition? (See Section 313 of the Communications Act of 1934) Yes ☐ No ☒

(d) Has the applicant or any party to this application been found guilty by any court of any felony or other crime involving moral turpitude, or of the violation of any State, territorial or local law relating to unlawful lotteries, restraints and monopolies and combinations, contracts or agreements in restraint of trade, or of using unfair methods of competition? Yes ☐ No ☒

LEGAL QUALIFICATIONS

10. (Continued)

e. Is there now pending in any court or administrative body against the applicant or any party to this application any action involving any of the matters referred to in Paragraphs 10a, b, c, and d above? Yes ☐ No ☒

f. Have voluntary proceedings in bankruptcy been instituted by, or have involuntary proceedings in bankruptcy ever been brought against applicant or any party to this application? Yes ☐ No ☒

g. Are there outstanding any unsatisfied judgments or decrees against applicant or any party to this application? Yes ☐ No ☒

h. If the answer to any of the foregoing parts of this paragraph is "Yes", submit as Exhibit No. a full disclosure concerning the persons and matters involved, identifying the court and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and the disposition of the matter.

DNA

CORPORATE APPLICANT

INSTRUCTION: If applicant is a corporation, answer paragraphs 11 to 16, inclusive.

11. Stock of corporation

(a) Class of stock	(b) Par value	(c) Vote per share	(d) No. shares authorized	(e) No. shares issued	(f) No. shares subscribed	(g) Total number stockholders

12. At the last meeting of stockholders were any shares of stock voted by proxy? Yes ☐ No ☐

If so, state

Class of stock	No. of shares	Meeting date	No. voted by stockholders in person	No. voted by proxy	Name of each proxy voting 1 percent more of each class

13. In connection with the stockholders and stock subscribers named in Table I to this form, is the beneficial owner of the stock a person other than the owner of record or subscriber? Yes ☐ No ☐

If so, submit as Exhibit No. a statement of (a) the name of the owner of record, or subscriber, (b) the name of the beneficial owner, (c) the conditions under which the owner or subscriber holds any votes or has subscribed for such stock, and (d) a copy of any contract or other instrument relating to such conditions.

14. Has applicant any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency? Yes ☐ No ☐

If so, submit as Exhibit No. a statement of (a) the nature of such securities, (b) the face value or par value, (c) the number of units authorized, (d) the number of units issued and outstanding, (e) the number of units, if any, proposed to be issued, (f) the conditions or contingency upon which such securities may be voted, and (g) facts showing whether or not such securities have been voted or entitled to be voted in the past 5 years and at the present time.

15a. Is applicant corporation, directly or indirectly, controlled by another corporation or legal entity? Yes ☐ No ☐

b. Is 10 percent or more of the stock of applicant corporation owned by another corporation or legal entity? Yes ☐ No ☐

c. If the answer to any of the foregoing parts of this paragraph is "Yes", state below the name of such other corporation or legal entity, and submit as Exhibit No. (a) a statement of how such control, if any, exists and the extent thereof, and (b) with respect to such other corporation or legal entity, a statement answering paragraphs 11 to 15, inclusive and the information requested in Tables I and II of this section.

16. Is the corporation or legal entity named in paragraph 15 in turn a subsidiary? Yes ☐ No ☐

If so, state below the name of such other parent corporation or legal entity, and submit as Exhibit No. a statement for each such corporation or legal entity answering paragraphs 11 to 16, and the information requested in Tables I and II of this section, to and including the organization having final control.

UNINCORPORATED ASSOCIATION (OR OTHER LEGAL ENTITY)

INSTRUCTION: If applicant is an unincorporated association or a legal entity other than an individual, partnership or corporation, answer paragraphs 17 and 18.

17. State the nature of the applicant, cite the laws under which organized, and submit as Exhibit No. a copy of such laws.

18. State the total number of members or persons holding any ownership interest in the applicant.

Table I

INSTRUCTIONS: *If applicant is an individual,* fill out columns (a) and (b) stating *(a)* applicant's name and residence (home) address or addresses, and *(b)* applicant's date and place of birth. *If applicant is a partnership,* fill out columns (a), (b), (c) and (g), stating as to each general or limited partner (including silent partners): *(a)* name and residence (home) address or addresses, *(b)* date and place of birth, *(c)* nature of partnership interest (i.e. general or limited), and *(g)* percent of ownership interest. *If applicant is a corporation or an unincorporated association,* fill out all columns, giving the information requested as to all officers, directors and members of the governing board. In addition, give the information as to all stockholders, stock subscribers, holders of membership certificates of other ownership interests, unless the applicant has more than 50 stockholders, stock subscribers or holders of membership certificates or other ownership interests, in which case furnish the information as to all persons owning 3 percent or more of the capital stock, membership or ownership interest, and all persons who voted 3 percent or more of such stock or interest at the last meeting of stockholders, members or owners. *If applicant is a corporation or unincorporated association,* state in columns *(g)* the percent of voting stock or voting interest held, *(d)* whether or not the individual is a director or member of the governing board (Yes or No), *(e)* the number of shares of stock of all classes or membership interests held, and *(f)* the number of shares of stock of all classes or membership interests subscribed for.

NAME AND RESIDENCE (home) ADDRESS(es) (a)	DATE AND PLACE OF BIRTH (b)	NATURE OF PARTNERSHIP INTEREST OR OFFICE HELD (c)	DIRECTOR OR MEMBER OF GOVERNING BOARD (Yes or No) (d)	NO. SHARES OF EACH CLASS OF STOCK OR NO. MEMBERSHIP OR OWNERSHIP INTERESTS		PERCENT OF OWNERSHIP OF PARTNERSHIP OR PERCENT OF VOTING STOCK OR MEMBERSHIP (g)
				Now held (e)	Subscribed (f)	
F. L. Crowder	March 17, 1906 Gainesboro, Tenn.					

Table II

BUSINESS AND FINANCIAL INTERESTS

INSTRUCTIONS: The purpose of Table II is to obtain information concerning the occupation, business, and financial interests, at the present time and during the past 5 years, of the applicant and of each party to this application named in Table I. In column (a) list the names of all individuals or organizations listed in column (a) of Table I. In column (b) state the principal occupations and businesses in which each party named is engaged at the present time or has been engaged at any time during the past 5 years, and, in addition, state any other business or financial enterprise in which such party has now or within the past 5 years has had either a 25% or greater interest or any official relationship. In each case, state in column (b) the firm name, the principal place of business, and the nature of the business engaged in. In case the party has been associated in business with any other person or persons, state the name of each such other person. In column (c) state the extent and nature of the interest, official relationship, employment, or association, giving approximate dates.

(a) Name of party	(b) Firm name, principal place of business, and nature of business	(c) Extent and nature of interest, etc. (giving dates)
F. L. Crowder	Harriman Billiard Parlor, Harriman, Tenn.	100% owner, 1944 to present
	7-Up Bottling Co., Livingston, Tenn.	100% owner, 1956 to present
	Audio Broadcasters, licensee of Radio Station WLIV, Livingston, Tenn.	50% partner, 1956 to present
	Harriman Broadcasting Co., licensee of:	100% owner:
	WHBT, Harriman, Tenn.	1950-1956
	WDEH, Sweetwater, Tenn.	1954-1956

Broadcast Application — LEGAL QUALIFICATIONS — Section II, Page 5

OTHER BROADCAST INTERESTS (See instructions on page 1)

19. Does applicant or any party to this application have now, or has applicant or any such party had, any interest in, or connection with, the following:

(a) Any standard, FM, or television broadcast station? Yes ☒ No ☐

(b) Any application pending before the Commission? Yes ☐ No ☒

(c) Any application which has been denied by the Federal Communications Commission? Yes ☐ No ☒

(d) Any broadcast station the license of which has been revoked? Yes ☐ No ☒

If the answer to any of the foregoing parts of this paragraph is "Yes", show particulars in the table below:

(1) Name of party having such interest	(2) Nature of interest or connection (giving dates)	(3) Call letters of station or file number of application	(4) Location
F.L. Crowder	50% partnership 1956 to present	WLIV	Livingston, Tenn.
"	100% owner 1950-56	WHBT	Harriman, Tenn.
	100% owner 1954-56	WDEH	Sweetwater, Tenn.

20. Is the applicant or any party to this application controlled, directly or indirectly, by any person who has any interest in or connection with any broadcast station or application of the type referred to in Paragraphs 19(a) to (d)? If so, submit as Exhibit No. giving full particulars. Yes ☐ No ☒

21. (a) Are any of the parties to this application related to each other (as husband, wife, father, mother, brother, sister, son or daughter)? DNA Yes ☐ No ☐

(b) Does any member of the immediate family (i.e., husband, wife, father, mother, brother, sister, son or daughter) of any party to this application have any interest in or connection with any other broadcast station or pending application? Yes ☐ No ☐

(c) If answer is "Yes" to either (a) or (b) above, state (a) names of the persons, (b) relationship, (c) nature and extent of such interest or connection, (d) name of applicant or call letters of station, (e) file number of application, and (f) location of station or proposed station involved.

OWNERSHIP AND CONTROL OF STATION

22. The Commission is seeking in this paragraph information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future ownership, control or operation of the station; the questions must be answered in the light of this instruction.

(a) Applicant's control over the station is to be by reason of: (Indicate by check mark)

Ownership ☒ Lease ☐ Other authority ☐

(b) Name and address of the owner of the station (if other than the applicant)

DNA

(c) Will the applicant have and maintain absolute control of the station, its equipment, and operation, including complete supervision of the programs to be broadcast? If "No", explain Yes ☒ No ☐

(d) Are there any documents, instruments, contracts or understandings relating to ownership, management, use or control of the station or facilities, or any right or interest therein? Yes ☐ No ☒

If so, attach as Exhibit No. copies of all such documents, instruments or contracts and state the substance of oral contracts or understandings.

Broadcast Application

FEDERAL COMMUNICATIONS COMMISSION

FINANCIAL QUALIFICATIONS OF BROADCAST APPLICANT	Name of Applicant F. L. Crowder d/b/a Harriman Broadcasting ~~Co.~~	Section III 9

The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.

1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile equipment, non-technical studio furnishings, etc. should be included under "Other Items" below.

Transmitter proper including tubes	Antenna system, including antenna-ground system, coupling equipment, transmission line	Frequency and modulation monitors	Studio technical equipment, microphones, transcription equipment, etc.
$ 6893.00	$ 4476.50	$ 1790.00	$ 5542.53

Acquiring land	Acquiring, remodeling, or constructing buildings	Other items Itemize	Total	Give estimated cost of operation for first year	Give estimated revenues for first year
$ 3000.00	$ 4500.00	Freight, contingencies and fees $ 1500.00	27,702.03 $	$ 42,000.00	$ 50,000.00

b. State the basis of the estimates in (a) above.

Equipment - manufacturer's quotation
Land - optioned price
Construction & other costs - applicant's knowledge or local prices

c. The proposed construction is to be financed and paid for in the following manner (including specified statements as to the approximate amount to be met and paid for from each source.) The financial plan should provide for any additional construction costs should the actual cost exceed the original estimated cost, and also for the early operation of the station in the event operating expenses should exceed operating revenues:

Existing Capital	New Capital	Loans from banks or others	Profits from existing operations	Donations	Credit, deferred payments, etc.	Other sources (specify)
$30,645.62	$ -	$ -	$ -	$ -	$ 17,394.10	$ -

2. a. Attach as Exhibit No. 1 a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. schedules which give a complete analysis of such items.

b. Attach as Exhibit No. 2 a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from the various types of activity in which he was engaged or from any other source.

3. Furnish the following information with respect to the applicant only. If the answer is "none" to any or all items, specifically so state:

a. Amount of funds on deposit in bank or other depository $30,645.62	b. Name and address of the bank in which deposited First National Bank Harriman, Tennessee

c. Name and address of the party in whose name the money is deposited

F. L. Crowder

d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition)

Checking account - subject to personal check of applicant

e. Whether the funds were deposited for the specific purpose of constructing and operating the station

No

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FUNDS, PROPERTY, ETC., TO BE FURNISHED BY PARTIES CONNECTED WITH APPLICANT OR BY OTHERS

4. Submit as Exhibit No. 3 a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the applicant) who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value excluding loans from financial institutions and equipment credit supply the additional information requested in a to g below. For financial institutions or equipment manufacturers, supply the additional information requested in h below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)

a. A description of that which has been or will be furnished by each person showing the value thereof and any encumbrances thereon.

b. If the funds or other things of value proposed to be used for the purchase or construction of the station have been acquired for that specific purpose, indicate the source or sources thereof.

c. For each person who has agreed to furnish funds, purchase stock or extend credit, submit a verified copy of the agreement by which each person is so obligated, showing the amount, terms of repayment, if any, and security, if any.

d. For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term current and liquid assets refers to items such as cash, or loan value of insurance, government bonds, stocks listed on major exchanges etc., or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Assets such as accounts receivable, which result from normal operation of a business, stocks of close corporations, timberland, building lots, etc., are not considered as a readily available source of funds without a specific showing that such assets will provide funds to meet proposed commitments. If a balance sheet does not clearly indicate liquid assets sufficient in amount to meet current liabilities and in addition, proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. Any financial statement furnished in lieu of a balance sheet should, likewise, describe assets relied on to provide funds, in sufficient detail to permit a determination of current position and should be more than a mere statement of total assets and total liabilities or a statement of net worth.

e. As to each person who has or has had in the past 5 years an interest of 25% or more in any business or financial enterprise or any official relationship to any business or financial enterprise, give full and complete disclosure of the enterprise, the name and principal place of business, the character of business engaged in, and the nature and extent of the interest in or relationship to such business.

f. Net income after Federal income tax, received for the past two years by each person who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income for the required periods was in excess of a certain specified amount will be sufficient.)

g. If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.

h. For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a verified copy of the agreement by which the institution or manufacturer is so obligated, showing the amount of loan or credit, terms of payment, if any, and security, if any.

a. See Exhibit 3
b. See Exhibits 1 & 2
c. DNA
d. See Exhibit 1
e. See Tables I and II
f. See Exhibit 2
g. DNA
h. See Exhibit 3

Broadcast Application

FEDERAL COMMUNICATIONS COMMISSION

Section IV

STATEMENT OF PROGRAM SERVICE OF BROADCAST APPLICANT

Name of applicant

F.L. Crowder d/b/a
Harriman Broadcasting Co.

11

NOTICE TO ALL APPLICANTS

The replies to the following questions constitute a representation of programming policy upon which the Commission will rely in considering the application. It is not expected that licensee will or can adhere inflexibly in day-to-day operation to the representation here made. However, since such representation will constitute, in part, the basis upon which the Commission acts on the application, time and care should be devoted to the preparation of the replies so that they will reflect accurately applicant's responsible judgment of his proposed programming policy.

INSTRUCTIONS

1. Paragraphs 1 to 4 are divided into a left-hand column which pertains to past operation and a right-hand column which pertains to proposed operation. Applicants for new stations or assignees or transferees of existing stations are to fill in only the right-hand column while applicants for authorizations for renewal of existing station licenses are to fill in both columns.
2. Program data on past performance are to be based on the composite week for the year preceding the date of application except in the case of renewal applications where the year preceding the expiration date of the existing license is to be used. The days comprising the composite week of each year will be designated by public notice on or about November 15th of that year.
3. Program classifications incident to the replies to Paragraphs 2, 3, and 4 below, are to be in accordance with the definitions on Page 4 of this Section.
4. Assignees or transferees filing FCC Form 314 or 315 need not complete paragraphs 5 or 8.

PAST OPERATION		PROPOSED OPERATION (for a typical week)	
1. (a) State actual minimum weekly schedule of operation under the present authorization, giving opening and closing time and total hours for weekdays and Sunday.		(b) State minimum weekly schedule of operation proposed by licensee, permittee, assignee or transferee, giving opening and closing time and total hours for weekdays and Sunday. Local sunrise to local sunset	
2. (a) State for the composite week the percentage of time which was devoted to each of the following types of programs (totals to equal 100%).		(b) State the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested. (totals to equal 100%). Attach program schedule for this proposed typical week and indicate thereon the class of each program in accordance with paragraph 4(b). See Exhibit 4	
(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	%	(1) Entertainment (include here all programs which are intended primarily as entertainment, such as music, drama, variety, comedy, quiz, breakfast, children's, etc.)	74.2 %
(2) Religious (include here all sermons, religious news, music, and drama, etc.)	%	(2) Religious (include here all sermons, religious news, music, and drama, etc.)	6.9 %
(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	%	(3) Agricultural (include here all programs containing farm or market reports or other information specifically addressed to the agricultural population)	2.6 %
(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)	%	(4) Educational (include here programs prepared by or in behalf of educational organizations, exclusive of discussion programs which should be classified under (6) below)	[illegible].3 %
(5) News (include here news reports and commentaries)	%	(5) News (include here news reports and commentaries)	9.8 %
(6) Discussion (include here forum, panel and round-table programs)	%	(6) Discussion (include here forum, panel and round-table programs)	2.4 %
(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	%	(7) Talks (include here all conversation programs which do not fall under Points (2), (3), (4), (5), or (6) above, including sports)	1.8 %
(8)	%	(8)	%
(9)	%	(9)	%
(10) Miscellaneous	%	(10) Miscellaneous	%
	100		100

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3. (a) Dividing the broadcast week into 15 minute periods, specify below the number of 14½ minute periods within such 15 minute periods during the composite week in which were broadcast (exclusive of non-commercial spot announcements, call letter announcements and promotional announcements for sustaining programs):

	No. of 14½ minute periods
(1) No spot announcements or commercial continuity	
(2) One spot announcement	
(3) Two spot announcements	
(4) Three spot announcements	
(5) Four spot announcements	
(6) Five or more spot announcements	
Total number of 14½ minute periods	

State the number of spot announcements (exclusive of non-commercial spot and call letter announcements, and promotional announcements for sustaining programs) broadcast during the composite week which exceeded one minute in length _______
(See definition of spot announcement)

(b) State what the practice of the station will be with respect to the number and length of spot announcements allowed in a given period.

Applicant will attempt to always limit spot announcements to three of not more than 1 minute in length (125 words) in any 14 1/2 minute segment. Under special circumstance it may be necessary to increase the total number to four, but the total length of some will be shortened so that the total commercial time will not exceed three minutes in any segment.

4. In the tables below the percentages for each segment are to be computed on the basis of 100 percent of the operating hours within the particular segment for the seven days comprising the composite week (i.e., if full time operation, 70 hours for the 8 a.m. to 6 p.m. segment, 35 hours for the 6 p.m. to 11 p.m. segment, and the total weekly hours of operation between 11 p.m., and 8 a.m. for the third segment). The percentages in the column headed "Total" are to be computed on the basis of 100 percent of operating hours for the seven days.

The exact number of spot announcements should be stated, including those broadcast within participating programs, but excluding call letter announcements (call letters and location) and promotional announcements for sustaining programs.

NOTE: The purpose of the following tabulation is to enable the Commission to secure quantitative data as to the proportion of time (to be) devoted to the various classes of programs. The function of each class of program as part of a diversified program structure is discussed in the Commission's Report of March 7, 1946, entitled "Public Service Responsibility of Broadcast Licensees".

(a) State the percentage of time which was devoted to each of the following classes of programs during the composite week.

PROGRAM LOG ANALYSIS
(in percentages)

	8 a.m.-6 p.m.	6 p.m.-11p.m.	All other hours	Total
(1) Network commercial (NC)				
(2) Network sustaining (NS)				
(3) Recorded commercial (RC)				
(4) Recorded sustaining (RS)				
(5) Wire commercial (WC)				
(6) Wire sustaining (WS)				
(7) Live commercial (LC)				
(8) Live sustaining (LS)				
(9) Total commercial (1+3+5+7)				
(10) Total sustaining (2+4+6+8)				
(11) Complete Total	100%	100%	100%	100%
(12) Actual broadcast hours (per week)				
(13) No. of spot announcements (SA) (per week)				
(14) No. of non-commercial spot announcements (NCSA) (per week)				

(b) Show in the table below the percentage of time proposed to be devoted to each of the following classes of programs during a proposed typical week of operation.

PROGRAM LOG ANALYSIS
(in percentages)

Daytime only station proposal

	8 a.m.-6 p.m.	6 p.m.-11p.m.	All other hours	Total
(1) Network commercial (NC)				-
(2) Network sustaining (NS)				-
(3) Recorded commercial (RC)				35.8
(4) Recorded sustaining (RS)				41.2
(5) Wire commercial (WC)				6.8
(6) Wire sustaining (WS)				1.8
(7) Live commercial (LC)				5.8
(8) Live sustaining (LS)				8.6
(9) Total commercial (1+3+5+7)				48.4
(10) Total sustaining (2+4+6+8)				51.6
(11) Complete Total	100%	100%	100%	100%
(12) Proposed broadcast hours (per week)				83
(13) No. of spot announcements (SA) (per week)				925
(14) No. of non-commercial spot announcements (NCSA) (per week)				50

* Eventually to become 75% commerc
25% sustaining. See Exhibit 4.

Broadcast Application

STATEMENT OF PROGRAM SERVICE

Section IV, Page 3

5. (a) Attach as Exhibit No. the original or one exact copy of the program log for the seven days comprising the composite week analyzed in the preceding paragraphs. (If original logs are submitted they will be returned.)

(b) What year's composite week has been analyzed in the foregoing paragraphs?

6. Will the proposed station be affiliated with any network? Yes ☐ No ☒
If the answer is "Yes", give the name of the network.

7. Attach as Exhibit No. a narrative statement on the policy to be pursued with respect to making time available for the discussion of public issues, including illustrations of the types of programs to be broadcast and the methods of selection of subjects and participants.

See Exhibit 5

8. If this application is for an FM authorization, will the programs of any AM station operating in the same area be duplicated? **DNA** Yes ☐ No ☐
If the answer is yes,

(a) How many hours per day will be devoted to duplicated programs?

(b) Call letters and location of the AM station

(c) What kinds of programs (musical, sports, etc.) will be duplicated?

9. State the average number of hours per week which will be used in advertising or promoting any business, profession or activity other than broadcasting in which the applicant is engaged or financially interested either directly or indirectly. If this is an application for renewal of license, show this data for the past license period also.

none

10. If the data furnished in response to the questions in this Section IV do not in the applicant's opinion adequately reflect station operation, attach as Exhibit No. a statement setting forth any additional program data that the applicant desires to call to the Commission's attention. (If the applicant feels that the program material classified in Paragraph 2 is susceptible of classifications other than those listed he may supplement Paragraph 2 with an explanatory statement in this Exhibit.) **DNA**

11. If this application is for a television authorization, will programs be broadcast in color? **DNA** Yes ☐ No ☐
If "Yes", will programs be: Network ☐ Local Live ☐ Local Slide ☐

12. State applicant's general plans for staffing the station, including the number of employees in each department (i.e. program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ.

Applicant will be General Manager of the station.

In addition, at least seven people will be employed -- three in programming, one in sales, one in engineering, one in general office duties and a station manager.

All employees will be U.S. citizens

PROGRAM CLASSIFICATION

A commercial program (C) is any program the time for which is paid for by a sponsor or any program which is interrupted by a spot announcement (as defined below), at intervals of less than 14 1/2 minutes. A network program shall be classified as "commercial" if it is commercially sponsored on the network, even though the particular station is not paid for carrying it--unless all commercial announcements have been deleted from the program by the station. Cooperative programs furnished to its affiliates by a network which are available for local sponsorship are network sustaining programs (NS) if no local sponsorship is involved and are network commercial programs (NC) where there is local sponsorship even though the commercial announcement is made by the station's local announcer.

(It will be noted that any 14½ minute segment of a program which is interrupted by a commercial announcement is classified as a commercial program, even though the purchaser of the interrupting announcement has not also purchased the time preceding and following. The result is to classify so called "participating" programs as commercial. Without such a rule, a 15-minute program may contain 5 or even more minutes of advertising and still be classified as "sustaining". Under the proposed definition, a program may be classified as "sustaining" although preceded and followed by spot announcements, but if a spot announcement interrupts a program, the 14½ minute segment so interrupted must be classified as "commercial.")

A sustaining program (S) is any program which is neither paid for by a sponsor nor interrupted by a spot announcement (as defined below.)

A network program (N) is any program furnished to the station by a network or another station. Delayed broadcasts of transcribed programs or films, originated by networks are classified as "network" not "recorded." Cooperative programs furnished to its affiliates by a network which are available for local sponsorship are network sustaining programs (NS) if no local sponsorship is involved and are network commercial programs (NC) where there is local sponsorship even though the commercial announcement is made by the station's local announcer. Programs are classified as network whether furnished by a nationwide, regional, or special network or by another station.

A recorded program (R) is any program which uses phonograph records, electrical transcriptions, films, or other means of mechanical reproduction in whole or in part--except where the recording is wholly incidental to the program and is limited to background sounds, sound effects, identifying themes, musical "bridges", etc. A program part transcribed or recorded and part live is classified as "recorded" unless the recordings are wholly incidental, as above. A transcribed delayed broadcast of a network program, however, is not classified as "recorded" but as "network." A recorded or filmed program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program.

A wire program (W) is any program the text of which is distributed to a number of stations by telegraph, teletype, or similar means, and read in whole or in part by a local announcer. Programs distributed by the wire news services are "wire" programs. A news program which is part wire and in part of non-syndicated origin is classified as "wire" if more than half of the program is usually devoted to the reading verbatim, or virtually verbatim, of the syndicated wire text, and otherwise is classified as "live."

A local live program (L) is any local program which uses live talent exclusively, whether originating in the station's studios or by remote control. Programs furnished to a station by a network or another station, however, are not classified as "live" but as "network". A program which uses recordings in whole or in part, except in a wholly incidental manner, should not be classified as "live" but as "recorded." Wire programs, as defined above, should likewise not be classified as "live". A recorded program which is a local live program produced by the station and recorded for later broadcasting by the station shall be considered a local live program.

A non-commercial spot announcement (NCSA) is an announcement which is not paid for by a sponsor and which is devoted to a non-profit cause--e.g., war bonds, Red Cross, public health, civic announcements, etc. Promotional announcements should be classified as "non-commercial spot announcements" if the program promoted is a sustaining program; other promotional announcements should be classified as "spot announcements". Participating announcements should not be classified as "non-commercial spot announcements" but as "spot announcements." War bond, Red Cross, civic and similar announcements for which the station receives remuneration should not be classified as "non-commercial spot announcements" but as "spot announcements."

A spot announcement (SA) is any announcement which is neither a non-commercial spot announcement (as above defined) nor a station identification announcement (call letters and location). An announcement should be classified as a "spot announcement," whether or not the station receives remuneration, unless it is devoted to a nonprofit cause. Sponsored time signals, sponsored weather announcements, etc. are spot announcements. Unsponsored time signals, weather announcements, etc., are program matter and not classified as announcements. Station identification announcements should not be classified as either non-commercial spot announcements or spot announcements, if limited to call letters, location and identification of the licensee and network. Commercial continuity on sponsored programs is not classified as spot announcements.

JA 15

COPY TO ENGINEERS

Broadcast Application — [illegible] COMMISSION — Section V-A

STANDARD BROADCAST ENGINEERING DATA	Name of applicant F. L. Crowder d/b/a Harriman Broadcasting Co. Harriman, Tennessee	15

1. Purpose of authorization applied for: (Indicate by check mark)
(If application is for a new station or for any of the changes numbered B through F, complete all paragraphs of this form; if change G is of a character which will change coverage or increase the overall height of the antenna structure more than 20 feet, answer all paragraphs, otherwise complete only paragraphs 2 and 10 and the appropriate other paragraphs; for changes H through M, complete only paragraph 2 and the appropriate other paragraphs; for change N complete only paragraphs 2 and 5.)

A. ☒ Construct a new station
B. ☐ Change power
C. ☐ Change transmitter location
D. ☐ Change frequency
E. ☒ Approval of site and antenna
F. ☐ Special Service Authorization
G. ☐ Change in antenna system (including addition of FM and TV antenna)
H. ☐ Change frequency control equipment
I. ☐ Change tubes in last radio stage
J. ☐ Change system of modulation
K. ☐ Change transmitter
L. ☐ Install auxiliary or alternate main transmitter
M. ☐ Other changes (specify)
N. ☐ Change studio location

If this application is not for a new station, summarize briefly the nature of the changes proposed.

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2. Facilities requested

Frequency	Hours of operation	Power in kilowatts Night	Day
970 KC	Daytime	--	0.5 KW

3. Station location

State	City or town
Tennessee	Harriman

4. Transmitter location

State	County
Tennessee	Roane
City or town	**Street Address (or other identification)**
Harriman	Emory ~~Clifty~~ Street

5. Main studio location

State	County
Tennessee	Roane
City or town	**Street and number, if known**
Harriman	To Be Determined

6. Remote control point location

State	City or town
Tennessee	Harriman

Street Address (or other identification): Same as Studio Location

7. Transmitter

Make	Type No.	Rated Power
Collins	20V3	0.5 KW

(If the above transmitter has not been accepted for licensing by the F.C.C., attach as Exhibit No. ---- a complete showing of transmitter details. Showing should include schematic diagram and full details of frequency control. If changes are to be made in licensed transmitter include schematic diagram and give full details of change.)

8. Modulation monitor

Make	Type No.
General Radio	1931-B

9. Frequency monitor

Make	Type No.
General Radio	1181-B

10. Antenna system, including ground or counterpoise

Non-Directional Antenna: Day ☒ Night ☐

Directional Antenna:
Day only (DA-D) ☐
Night only (DA-N) ☐
Same constants and power day and night (DA-1) ☐
Different constants or power day and night (DA-2) ☐

(If a directional antenna is proposed submit complete engineering data. Show clearly whether directional operation is for day or night or both. If day and night patterns are different give full information on each pattern. This information is in addition to the information in Paragraph 10 and is submitted as Exhibit No. --- and signed by the engineer who designed the antenna system.)

Type radiator Vertical Uniform Cross-Section, Guyed	Height in feet of complete radiator above base insulator, or above base if grounded. 200'
Overall height in feet above ground. (Without obstruction lighting) 205'	Overall height in feet above mean sea level. (Without obstruction lighting) 960'
Overall height in feet above ground. (With obstruction lighting) 208'	Overall height in feet above mean sea level. (With obstruction lighting) 963'
If antenna is either top loaded or sectionalized, describe fully as Exhibit No. ---	

Excitation: Series ☒ Shunt ☐

Geographic coordinates to nearest second.
For direction antenna give coordinates of center of array.
For single vertical radiator give tower location.

North latitude	West longitude
35° 55' 41"	84° 33' 00"

If not fully described above, give further details and dimensions including any other antennas mounted on tower and associated isolation circuits as Exhibit No. Not Applicable (Weight figures should not include obstruction lighting.)

Submit as Exhibit No. EE a plat of the transmitter site showing boundary lines, and roads, railroads, or other obstructions; and also layout of the ground system or counterpoise. Show number and dimensions of ground radials or if a counterpoise is used, show height and dimensions.

11. Attach as Exhibit No. EE a sufficient number of aerial photographs taken in clear weather at appropriate altitudes and angles to permit identification of all structures in the vicinity. The photographs must be marked so as to show compass directions, exact boundary lines of the proposed site, and locations of the proposed 1000 mV/m contour for both day and night operation. Photographs taken in eight different directions from an elevated position on the ground will be acceptable in lieu of the aerial photographs if the data referred to can be clearly shown.

12. Allocation Studies: -- 16

A. Attach as Exhibit No. EE map or maps, having reasonable scales, showing the 1000, 25, 5, 2, normally protected and interference-free contours in mv/m for both day and night operation both existing and as proposed by the application. (NOTE: The 2 mv/m night contour need not be supplied if service is not rendered thereto.)

B. (1) For daytime operation, attach as Exhibit No. EE an allocation study, utilizing Figure M-3 of the Rules or an accurate full scale reproduction thereof and using pertinent field strength measurement data where available, a full scale exhibit of the entire pertinent area to show the following:

(a) Normally protected, the interference-free, and the interfering contours for the proposed operation along all azimuths.

(b) Complete normally protected and interference-free contours of all other proposals and existing stations to which objectionable interference would be caused.

(c) Interfering contours over pertinent arcs of all other proposals and existing stations from which objectionable interference would be received.

(d) Normally protected and interfering contours over pertinent arcs of all other proposals and existing stations which require study to show the absence of objectionable interference.

(e) Plot of the transmitter location of each station or proposal requiring investigation, with identifying call letters, file numbers, and operating or proposed facilities.

(f) Properly labeled longitude and latitude degree lines, shown across entire exhibit.

(2) For daytime operation, when necessary to show more detail, attach as Exhibit No. EE an additional allocation study, utilizing World or Sectional Aeronautical charts to clearly show interference or absence thereof.

(3) For daytime operation, attach as Exhibit No. EE a tabulation of the following:

(a) Azimuths along which the groundwave contours were calculated for all stations or proposals shown on allocation study exhibits required by Paragraph 12B above.

(b) Inverse distance field strength used along each azimuth.

(c) Basis for ground conductivity utilized along azimuths specified in (3) (a). If field strength measurements are used, the measurements must be either submitted or be properly identified as to location in Commission files.

C. For nighttime operation, attach as Exhibit No. N.A. , allocation data to include the following:

(1) Proposed nighttime limitation to other existing or proposed stations with which objectionable interference would result, as well as those other proposals and existing stations which require study to clearly show absence of objectionable interference.

(2) All existing or proposed nighttime limitations which enter into the nighttime R.S.S. limitation of each of the existing or proposed facilities investigated under C (1) above.

(3) All existing and proposed limitations which contribute to the R.S.S. nighttime limitation of the proposed operation, together with those limitations which must be studied before being excluded.

(4) A detailed interference study plotted upon an appropriate scale map if a question exists with respect to nighttime interference to other existing or proposed facilities along bearings other than on a direct line toward the facility considered.

(5) Utilizing an appropriate scale map, clearly show the normally protected and interference-free contours of each of the existing and proposed stations which would receive nighttime interference from the proposed operation.

(6) The detailed basis for each nighttime limitation calculated under C (1)(2)(3) and (4) above, including a copy of each pertinent radiation pattern in the vertical plane and basis therefor.

13. Attach as Exhibit No. EE tables of the areas and populations within the contours included in Paragraph 12 (A) above, as well as within the normally protected and interference-free contours of each station or proposed operation to which interference would be caused according to the Commission Rules.

(NOTE: See the Standard Broadcast Technical Standards. All towns and cities having populations in excess of those given in Section 3.182(g) are not to be included in the tabulation of populations within the service contours. The 1960 or later Census Minor Civil Division maps are to be used in making population counts, subtracting any towns or cities not receiving adequate service, and where contours cut a minor division assuming a uniform distribution of population within the division, to determine the population included in the contours unless a more accurate count is made.)

Broadcast Application — **STANDARD BROADCAST ENGINEERING DATA** — Section V-A, Page 3

14. Attach as Exhibit No. EE map or maps having reasonable scales clearly showing the following:

(a) Proposed antenna location

(b) General character of the city or metropolitan district, particularly the retail business, wholesale business, manufacturing, residential, and unpopulated areas (by symbols, cross-hatching, colored crayons, or other means)

(c) Heights of buildings or other structures and terrain elevations in the vicinity of the antenna, indicating the location thereof.

(d) Transmitter location and call letters of all radio stations (except amateur) and the location of established commercial and government receiving stations within 2 miles of the proposed transmitter location. Call letters and locations of broadcast stations, including FM and television, within 5 miles must be shown.

(e) Terrain

15. If this application is for modification of construction permit state briefly as Exhibit No. N. A. the present status of construction and indicate when it is expected that construction will be completed.

I certify that I am the ~~Technical Director, Chief Engineer or~~ Consulting Engineer for the applicant of the radio station for which this application is submitted and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief. (This signature may be omitted provided the engineer's original signed report of the data from which the information contained herein has been obtained is attached hereto.)

Date September 18, 1961

Peter V. Gureckis

~~Technical Director, Chief Engineer or~~ Consulting Engineer

Peter V. Gureckis

JOHN H. MULLANEY AND ASSOCIATES

JA 18

Broadcast Application — FEDERAL COMMUNICATIONS COMMISSION — Section V-G (Antenna)

ANTENNA AND SITE INFORMATION
(see instruction B
Section I)

Name of applicant: F. L. Crowder d/b/a Harriman Broadcasting Company

Address where applicant can be reached in person: P.O. Box 39, Livingston, Tennessee

— 18

Since this Section is submitted to the Regional Airspace Subcommittee of the Air Coordinating Committee for clearance in connection with obstructions to air navigation, it is necessary that all the data called for be supplied. Previously and separately filed data must not be incorporated by reference.

Legal Counsel: Krieger & Jorgensen

Address: 2011 Eye Street, N. W., Washington, D.C.

Consulting Engineer: John H. Mullaney & Associates

Address: 2000 P Street, N. W., Washington 6, D.C.

Class of station: Standard

Facilities requested: 970 KC, 500 Watts, D

Purpose of application (Check appropriate box)

a. New antenna construction ☒
b. Alteration of existing antenna structure ☐
c. Change in location ☐

2. Features of surrounding terrain

List any natural formations or existing man-made structures (hills, trees, water tanks, towers, etc.) which, in the opinion of the applicant, would tend to shield the antenna from aircraft and thereby minimize the aeronautical hazard of the antenna.

A High Hill on South Side of Tower

1. Location of antenna

State	County	City or Town
Tennessee	Roane	Harriman

Exact antenna location (street address) (If outside city limits, give distance and direction from, and name of nearest town)

Emory ~~Clifty~~ Street

Geographic coordinates (to be determined to nearest second. For directional antenna give coordinates of center of array.) For single vertical radiator give tower location.

North latitude	West longitude
35° 55' 41"	84° 33' 00"

Submit as Exhibit No. EE a chart on which is plotted the exact location of the antenna site, and also the relative location of the natural formations and/or the existing man-made structures listed above.
The chart used shall be an Instrument Approach Chart (or the landing chart on reverse side thereof), or a Sectional Aeronautical Chart, choice depending upon proximity of the antenna site to landing areas. 1/ In general, the Sectional Aeronautical Chart should be used only when the antenna site is more than 10 miles from a landing area or when an Instrument Approach Chart is unobtainable. 1/ These charts may be purchased from the U. S. Coast and Geodetic Survey, Washington 25, D. C.
1/ Exception - Where the proposed antenna site is within the boundary of a landing area for which no Instrument Approach Chart is available, submit a self-made, large scale map showing antenna site, runway(s) and existing man-made structures listed above.

3. Designation, distance, and bearing to center line of nearest established airway within 5 miles: None

4. List all landing areas within 10 miles of antenna site: Give distance and direction to the nearest boundary of each landing area from the antenna site.

	Landing Area	Distance	Direction
(a)	Roane Co.	5 Miles	N 23° E
(b)			
(c)			

5. Description of antenna system (If directional, give spacing and orientation of towers).

A 200' Vertical Uniform, Cross-Section, Guyed Tower Used in Conjunction with 120 Radials 250' Long, Plus a 24' x 24' Ground Screen (See Engineering Exhibit EE, Figures 9 and 11)

Type: Vertical

Description of tower(s): Uniform Cross-Section

Self-supporting — Guyed x — Tubular (Pole)

Tower (height figures should include obstruction lighting)	#1	#2	#3	#4	#5	#6
Height of radiating elements	200'					
Overall height above ground	208'					
Overall height above mean sea level	963'					

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If a combination of Standard, FM, or TV operation is proposed on the same multi-element array (either existing or proposed) submit as Exhibit No. -- a horizontal plan for the proposed antenna system, giving heights of the elements above ground and showing their orientation and spacing in feet. Clearly indicate if any towers are existing.

Submit as Exhibit No. EE a vertical plan sketch for the proposed total structure (including supporting building if any) giving heights above ground in feet for all significant features. Clearly indicate existing portions, noting painting and lighting.

Is the proposed antenna system designed so that obstruction lights may be installed and maintained at the uppermost point(s)? Yes ☒ No ☐

6. Is the proposed site the same or immediately adjoining the transmitter-antenna site of other stations authorized by the Commission or specified in another application pending before the Commission? Yes ☐ No ☒

If the answer is "Yes", give: Not Applicable

Call letters ----

File numbers ----

Date: September 18, 1961

Peter V. Gureckis
Signature of Engineer preparing data
Peter V. Gureckis

JOHN H. MULLANEY AND ASSOCIATES

Exhibit 1
Sec. III, para.2a

F. L. CROWDER
HARRIMAN, TENNESSEE
BALANCE SHEET

JULY 31, 1961

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ASSETS:		
Cash on Hand and in Bank		30,645.62
Accounts Receivable		9,573.52
Notes Receivable- A. Smith, Jr.		10,100.00
Merchandise Inventory		9,725.00
Bottle and Case Inventory		10,674.61
Equipment:		
Plant Equipment	93,396.22	
Three Automobiles	4,600.00	
Billard Hall Equipment	15,000.00	
Furniture & Fixtures-Personal	5,100.00	118,096.22
Partnership Interest-Station WLIV		40,000.00
Cash Surrender Value-Life Insurance		7,200.00
Dr. Pepper Franchise		12,000.00
Real Estate:		
Roane Street, Harriman, Tenn	30,000.00	
Residence, Harriman, Tenn	20,000.00	
Land- Overton County, Tenn	2,000.00	
Land- Livingston, Tenn	5,100.00	
Seven-Up Plant, Livingston, Tenn	41,494.51	
Land Swan Pond Road, Harriman, Tenn	5,000.00	103,594.51
TOTAL ASSETS		$ 351,609.48
LIABILITIES & NET WORTH		
Accounts Payable		4,289.60
Notes Payable:		
First National Bank, Harriman, Tenn	17,000.00	
First National Bank, Harriman, Tenn	12,000.00	
Dostal-Lowery Company	4,462.00	
Cherry Burrell Company	2,179.65	35,641.65
Reserve for Payroll Taxes		124.88
Reserve for Depreciation		47,844.35
F. L. Crowder, Net Worth		263,709.00 ✓
TOTAL LIABILITIES AND NET WORTH		$ 351,609.48

Exhibit 2
Sec. III, para. 2(b

The yearly net income, after Federal income tax, for each of the past two years of the applicant was in excess of $10,000.00 each year.

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OFFICE OF THE SECRETARY

Exhibit 3
Sec. III, para. 4

COLLINS RADIO COMPANY
CEDAR RAPIDS, IOWA, U.S.A.

CABLE
COLINRAD

TELEPHONE
GATLINBURG 436-5497

ADDRESS REPLY TO
JOHN F. STANBERY
P. O. BOX 336
GATLINBURG, TENN.

June 24th. 1961.

RECEIVED
OCT 4 1961
F. C. C.
OFFICE OF THE SECRET

Mr. Freeman L.Crowder,
P.O.Box # 39,
Livingston, Tennessee.

Re: Harriman Bdcstng. Co. Harriman, Tenn.
Contract # 11700 $17,394.10

Dear Mr. Crowder;

We are pleased to attach two copies of the subject equipment proposal covering equipment requirements for the planned new Harriman, Tennessee. AM station on 970kc.

Collins Radio Company appreciates the opportunity to again work with you regarding an AM station. While we have specified the payments of 1/3 cash downpayment and the remaining 2/3 over a three year (36 mo.) period at your own suggestion, we have available terms with lower cash downpayment available if you desire them.

Should you desire to use this letter as a part of youe application before the FCC, you have our permission to do so.

If we can be of further assistance in any manner whatever, relative to this specific project or any other matters wherein we might aid you, please do not hesitate to contact this office or our main office at Cedar Rapids, Iowa. You are assured of our interest and complete cooperation at all times.

Best regards.

Sincerely,

John F. Stanbery

John F.Stanbery
Division Manager/Engineer

Encl: Proposal # 11700

jfs:mv

COLLINS

BROADCAST EQUIPMENT PROPOSAL

--- 22

PREPARED FOR

MR. FREEMAN L.CROWDER,
P.O.BOX # 39,
LIVINGSTON, TENNESSEE.

RE: HARRIMAN BROADCASTING COMPANY, HARRIMAN, TENN.

PROPOSAL # 11700 DATED: 6/24/61.

PROPOSED 500 WATT AM DAY , 950KC

RECEIVED
OCT 4 1961
F. C. C.
OFFICE OF THE SECRETARY

SUMMARY

Transmitting Equipment	$ $6,893.00	
Monitoring Equipment	1,790.00	
Antenna and Phasing Equipment	4,476.50	
Studio Technical Equipment	5,542.53	
TOTAL	$ TOTAL	$ $18,309.58
(TRADE-IN WRITE-UP) LESS5 % ADV. ALLOWANCE	$ $915.48	
	$	$915.48
BALANCE DUE		$ NET TOTAL PRICE $17,394.

SALESMAN'S NAME	ADDRESS	PHONE
JOHN F.STANBERY	P.O.BOX # 325, GATLINBURG, TENNESSEE	436-9

CUSTOMER

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JA 23

BROADCAST EQUIPMENT PROPOSAL

23

information provided below by the Buyer will assure correct, prompt processing and becomes part of the terms and conditions of *Collins proposal.

FCC LISTING OF BUYER NAME AND ADDRESS:
Harriman Broadcasting Company　　Station: Harriman, Tennessee. 970 kc.
℅ Mr. F.L.Crowder, P.O.Box # 39.
Livingston, Tennessee.

TYPE OF BUSINESS: Proprietorship ☐　Partnership ☐　Corporation ☐

ROPRIETOR, PARTNER OR CORPORATE OFFICERS:

NAME	TITLE	% OWNERSHIP
Mr. Freeman L.Crowder.	Owner	100%

PAID IN CAPITAL $

LOANS FROM OWNERS $

LOANS FROM OTHERS $

SOURCE OF OUTSIDE FINANCING:

COMPANY BANK REFERENCE:

ADDRESS:

OWNERS BANK REFERENCE & ADDRESS (LIST IN ORDER OF OWNERS LISTED ABOVE)

FINAL CP RECEIVED? Yes ☐ No ☐　9. PAYMENT: Cash ☐ Financed ☒

YPE OF ORDER: FIRM ☐ CONTINGENT ☐

NAME AND ADDRESS OF PERSON TO RECEIVE ALL CORRESPONDENCE REGARDING ORDER:
Mr. Freeman L.Crowder, P.O.Box # 39.
Livingston, Tennessee.

SHIPPING ADDRESS:
Studio:　Transmitter

SHIP VIA: Rail Freight ☐　Express ☐　Motor Freight ☒　Best Way ☐
Route and Carrier

ANTENNA: Number of Towers 1　Height 200' Ft.　Shunt Feed ☐　Series Feed ☒
Line Lengths 150'
Phasing Data Included? Yes ☐ No ☐

IS CORRECT LEGAL DESCRIPTION OF PROPERTY INCLUDED? Yes ☐ No ☐ (For Financing Only)
(Legal description of the property on which the equipment in this order is to be located is a necessary part of the standard conditional sales contract which will be returned to the customer for his signature before shipment of the equipment; description for both studio and transmitter required.) Later

this Proposal is signed by the Buyer, returned to Collins Radio Company and executed by it at its office in Cedar Rapids, Iowa, it shall become a firm order and contract for the purchase by Buyer from Collins of the Equipment and Services herein described, incorporating this sheet page 1 of ______ pages and all continuation sheets attached hereto, if any, all of which are subject to the terms and conditions specified including those on the reverse side hereof.

LLINS RADIO COMPANY

DATE

BUYER SIGN HERE HARRIMAN BROADCASTING COMPANY

BY: F.L.CROWDER　TITLE　DATE

(REV 3-62)　CUSTOMER　Page ____ of ____

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(Rev. 10-67)

GENERAL CONDITIONS OF SALE

1. PRICES. Buyer agrees to pay Collins Radio Company, (hereinafter called Collins), at its office in Cedar Rapids, Iowa, for the articles described herein, the prices as specified on the face hereof, provided, however, that if articles are included herein which are manufactured by others than Collins, Collins reserves the right to increase the price thereof to Collins list price for such articles in effect at time of delivery. If all articles are not delivered at one time, Buyer agrees to pay on the terms stated the unit prices applicable to the articles so delivered.

2. TAXES. Except as otherwise specified, the prices stated herein do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of said equipment, and the Buyer expressly agrees to pay to Collins, in addition to the prices herein specified, the amount of any such taxes which may be imposed upon or payable by Collins. Any such tax imposed by a taxing authority in a state in which Collins is not registered will be received and remitted by Collins as agent for Buyer.

3. TERMS. Notwithstanding any statement of terms or time of payment appearing on the face of this order, Collins reserves the right to require payment in advance of shipment or to ship C.O.D. It is agreed that title to any articles not fully paid for at time of delivery to Buyer shall be retained by and remain in Collins until said purchase price is fully paid and if the purchase price is to be paid on an installment basis, Buyer will at time of delivery execute a note for such purchase price and a conditional sale contract or chattel mortgage as Collins shall specify, all upon forms customarily used by Collins in similar transactions in the state of the Buyer.

4. DELIVERY. Unless otherwise specified, delivery will be made f.o.b. the place of location of Collins' factory from which Collins elects to make shipment, according to the delivery schedule specified herein, which schedule is approximate and subject to delays due to causes beyond Collins' control including but not limited to, inability to obtain material, labor, or manufacturing facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government or any other act of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Collins' suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. In no event shall Collins be liable for consequential damages. Buyer agrees that Collins may unconditionally appropriate to this order equipment of the description set out on the face of this order by packing same for shipment to Buyer and notifying Buyer that same has been done; thereupon the sale shall be deemed complete subject to Collins' right to possession of and a lien upon said equipment (or to Collins' reserved title in case property is to be covered by conditional sales contract) for the unpaid purchase price.

5. SHIPMENT. In the absence of specific instructions Collins will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled "Guarantee" and "Patents," all responsibility of Collins for said equipment ceases upon delivery to carrier.

6. GUARANTEE.

Except as otherwise provided in this section, the equipment described herein is sold under the following guarantee:

Collins agrees to repair or replace, without charge, any equipment, parts or accessories which are defective as to design, workmanship or material, and which are returned to Collins at its factory, transportation prepaid, provided

(a) Notice of the claimed defect is given Collins within one (1) year from date of delivery and goods are returned in accordance with Collins' instructions.

(b) Equipment, accessories, tubes and batteries, not carrying a Collins assigned type number and not manufactured by Collins or from Collins' design are subject to only such adjustment as Collins may obtain from the supplier thereof.

(c) Equipment or accessories shall not be deemed to be defective if, due to exposure or excessive moisture in the atmosphere or otherwise after delivery, it shall fail to operate in a normal or proper manner.

Collins further guarantees that any radio transmitter described herein will deliver full radio frequency power output at the antenna lead when connected to a suitable load, but such guarantee shall not be construed as a guarantee of any definite coverage or range of said apparatus.

The guarantee of these paragraphs is void if equipment is altered or repaired by others than Collins or its authorized service center.

No other warranties, expressed or implied, shall be applicable to any equipment sold hereunder, and the foregoing shall constitute the Buyer's sole right and remedy under the agreements in this paragraph contained. In no event shall Collins have any liability for consequential damages, or for loss, damage or expense directly or indirectly arising from the use of the products, or any inability to use them either separately or in combination with other equipment or materials, or from any other cause.

The foregoing is not applicable to amateur equipment which equipment is sold under the guarantee printed in the instruction book accompanying such equipment.

7. PATENTS. Collins agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or patents covering, or alleged to cover, either said apparatus itself in the form sold by Collins, or the normal operation thereof, where the only issue in such infringement suits involves the Buyer's use of said apparatus, as so sold, for the purpose and in the manner contemplated by this agreement, and Collins agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Collins shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer, and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice to the right of the Buyer to continue the use, as contemplated, of the apparatus so purchased. If in any such suit so defended the apparatus is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Collins deems it advisable to do so, Collins may either procure the right to continue the use of the same for the Buyer, or replace the same with non-infringing apparatus, or modify said equipment so as to be non-infringing, or take back the infringing apparatus and refund the purchase price less a reasonable allowance for use, damage or obsolescence. The complete liability of Collins for any such infringement, or claim of infringement, shall be limited to its agreements herein contained. It is understood that Buyer acquires no license rights from Collins under the patents covering inventions of Edwin H. Armstrong relating to the transmitting or receiving of sound, visual images, or graphic matter from frequency modulated radio waves; that nothing contained herein shall be deemed to apply or relate to suits or claims based upon any of the said Armstrong patents; and that insofar as Buyer needs a license under said Armstrong patents, it will procure such license itself.

8. SUBSTITUTIONS AND MODIFICATIONS. Collins reserves the right to modify the design and specifications of equipment designed by Collins provided that the modification does not adversely affect the performance.

9. ENTIRE CONTRACT. The terms and provisions stated hereon, together with those appearing on the face hereof, and on all continuation sheets, if any, comprise all the terms, conditions and agreements of the parties respecting the sale of said articles, and supersede any provisions on the face and reverse side of the Buyer's Order or any prior general agreement inconsistent with the provisions hereof. No modification hereof shall be valid unless in writing and duly signed by an officer of Collins.

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BROADCAST SALES PROPOSAL

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ITEM	QTY.	DESCRIPTION	UNIT PRICE	TOTAL
		TRANSMITTING EQUIPMENT		
1	1	AM Broadcast transmitter, Collins Type 20V-3 1000/500 watt, complete with one set of tubes, one crystal and two instruction books. Transmitter to be tested for a frequency of 970 KC, with a load impedance of 52 ohms.		$4,775.00
2	1	Spare tubes, (~~Complete~~) (F.C.C.) set for Collins Type 20V-3 transmitter.		133.00
	1	Spare crystal for Collins Type 20V-3 (970kc) transmitter.		90.00
3a	1	Remote Control System: Collins/Rust Type 108-F for Collins 20V-3 watt AM broadcast transmitter. 1. Controls: Tower Lights & Current, Filaments, Plate Power, Plate Voltage (output) 2. Meters: Filament Line Volts, Plate Voltage, Plate current, Antenna current. 3. Units, 108-OF-1F, 5A,18,18, 21B (750 ohm 500w) 6A,9B1-8C & 3A. 4. Factory Installed: Yes ☒ No ☐ Fully tested for both local and remote operation		1,470.00
4	1	Limiter Amplifier: Collins Type 26U-1, with one set of tubes and instruction book.		425.00
		MONITORING EQUIPMENT		
5	1	AM Modulation Monitor GR/Collins Type 1931B, with one set of tubes and instruction manual.		650.00
6	1	AM Frequency Monitor GR/Collins Type 1181-B, with one set of tubes and instruction manual.		1,025.00
		FM Frequency/Modulation Monitor ___ Type ___, with one set of tubes and instruction manual.		
		Phase monitor, ___ Type ___, complete with remote antenna current meters for ___ tower array.		
		Field intensity meter, ___ Type ___ with one set of tubes and instruction manual.		
7	1	Conelrad Receiver Karr Type Conelart for (rack) [illegible]) mounting.		140.00
8	1	Collins 42E-7 1000w Antenna Tuning Unit, housed in weatherproof cabinet. (Less remote metering equipment)		350.00
9	1	Remote Meter Kit (including remote meter, thermocouple, current transformer and hardware		75.00
0	1	Collins 2 Wire Tower Lighting Filter, to be housed in Tuner (200w)		72.50
1	150ft	RG218U Solid-dielectric coaxial T/L. for direct burial (supersedes RG17U	76/ft.	114.00

935-04 [illegible]

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BROADCAST SALES PROPOSAL

ITEM	QTY.	DESCRIPTION	UNIT PRICE	TOTAL
		ANTENNA and PHASING EQUIPMENT		
12	1	Antenna tower, Utility Type #220, 200' feet above foundation. [redacted] (Non-Galv.), (Guyed), ([redacted], Insulated), ([redacted], complete with the following: 1. ☒ Base insulator, plate, guy wire, guy insulators, anchors for imbedding in concrete and all necessary hardware *for guyed towers.* 2. Lighting kit in accordance with F.C.C. specification A-2, including: ☒ 300 mm beacon ☒ Obstruction lights ☒ Flasher mechanism ☒ Necessary exposed wiring for tower height ☐ Necessary conduit and wire for tower height ☒ P.E. Control F.P. Type #633050, 3000 Watt( )		3.214.00
		3. Erection drawings Ground system material consisting of:		
13	755	______ lbs., Copper ground wire, #10 AWG, bare, semi-soft, annealed, approx 24000 feet, for antenna ground system.	60/lb.	453.00
14	50	______ lbs., 2"x.032" copper ground stray, 4.02 ft. per lb., approx 200 ft.	90/lb.	45.00
		______ lbs., 4"x.032" copper ground strap, 2.01 ft. per lb., approx ______ ft.		
15	3	3 shts., 8'x24' expanded copper mesh for antenna ground screen to cover an area of 576 square feet. (24' x 24' square)	51.00	153.00

Installation Utility Type #220, 200 ft. antenna tower(s)

1. Concrete base and anchor installation, tower erection, installation of F.C.C. lighting kit, painting of tower with one coat of paint per applicable CAA regulations.

2. All tower erection equipment and labor, (plus concrete) [redacted]e), to be supplied by tower erector. Included in item # 12

3. Installation of ground system, including: By Customer

   a. Plowing-in of ______ radials, each ______ feet long, minimum depth to be ______ inches; ______ radials ______ feet long, minimum depth ______ inches; interspersed between long radials.

   b. Installation of ______ sheets of 8'x24' expanded copper mesh and all necessary bonding to form ground screen ______ by ______ feet. Tower erector to supply installation materials such as brazing rod, silver solder, etc., required for installation of wire, screen mesh and bonding straps as designated elsewhere in this proposal. By Customer

4. Prices quoted on tower erection work, ground system installation and installation of concrete foundation and anchors are based on normal soil, weather, labor costs and building restrictions prevailing. Abnormal soil conditions such as swampy, sandy, rock, peat or frozen soil or unusual weather conditions such as heavy snow, zero weather make this quotation subject to review. Site must be accessible by truck and other equipment, and must be free of trees, brush, rock and other obstacles and/or debris.

5. Buyer will cause inspection to be made of the tower and site during the course of erection and will advise Collins immediately of the existence of any condition or of any action or failure to act on the part of the tower erector because of which erection may not proceed as provided herein. When the tower is in place, a joint inspection will be made by Buyer, Collins representative and the tower erector and the tower will be accepted by Buyer and Collins, conditioned only upon exceptions, if any, to such specific items requiring correction as appear in the course of such inspection. When these items have been corrected, Buyer shall indicate final acceptance of the tower. After final acceptance, Buyer's right with respect thereto shall be limited to recovery under the tower erector's warranty.

Phasing system ______ Type ______, containing networks and equipment for control or phase and amplitude in a ______ tower, ______ watt directional array, ______

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BROADCAST SALES PROPOSAL

M	QTY.		UNIT PRICE	TOTAL
	1	STUDIO TECHNICAL EQUIPMENT Studio speech console Collins Type 212F-2, complete with tubes and instruction book, and including the following units: 7 356A-1 Amplifier(s) 1 356B-1 Program/monitor amplifier(s) 1 356E-1 Limiting amplifier(s) 1 356Q-1 Cue amplifier With builtin Sta-Level Amp. 1 409X-(2) Power supply(s) 1 Relay unit(s) ___ 499G-1 Shelf assembly(s) 1 12-pin Plug & cable assembly(s) ___ 15-pin Plug & cable assembly(s) 1 Power cable(s) Cue Pots		
	2	Transcription turntable(s) Collins Type TT-200S 12" 3 Spd.		1,655.00
	2	Transcription turntable cabinets ___ Type ___	149.95	299.90
	2	Playback arm(s) Gray Type 212 12"	34.00	68.00
	2	Equalizer(s) Gray Type 6020	57.50	115.00
	2	Cartridge(s) GE 4GD-01D-02S Type 1 mil diamond		
		Stylus 2 mil sapphire Type dual styli with ___ mil (sapphire) (diamond).	22.50	45.00
	2	Microphone(s) Collins Type M-40 with stand ohms	72.50	145.00
		Microphone(s) ___ Type ___, ___ ohms		
	1	Microphone(s) Collins Type M-30 with stand ohms		48.50
		Microphone(s) ___ Type ___, ___ ohms		
	1	Microphone stand(s) Atlas Type MS-110 Program		7.80
	1	Microphone stand(s) Flexo #1 Type Mikester (control room		8.60
	4	Speaker(s) Collins Type CS-8 20 watt, 8 inch, permanent magnet type. (high-fidelity	13.50	54.00
		Speaker(s) ___ Type ___, ___ watt, ___ inch, permanent magnet type.		
	4	Speaker housing(s) Argos Type SCB-8 for 8 inch speaker, mahog finish, wall/corner mounting.	7.90	31.60
		Speaker housing(s) ___ Type ___ for ___ inch speaker, ___ finish, ___ mounting.		
	4	Line matching transformer(s) Jensen Type ZY92092,	4.95	19.80
	1	Remote amplifier(s) Collins Type 212H-1, 3 channel, complete with tubes, instruction book and carrying case.		325.00
	1	Tape recorder(s) Ampex Type 601P, with the following: with portable carrying case & Low Z input trans.		617.95
	1	Jack panel(s) Collins Type 24, ___ pair		50.00
	4	Patch cord(s) 24" inches.	8.25	33.00
		Terminal assembly ___ Type ___		
	1	Rack cabinet Collins Type 1773A, height 76" inches, panel space 70 inches, finish Collins		75.00
		Rack cabinet ___ Type ___, height ___ inches, panel space ___ inches, finish ___		
	1000	ft. Shielded hook-up wire, 2/C conductor # #8738 #20 stranded	.03/ft.	30.00
	200	ft. Shielded hook-up wire, 2/c conductor # #16 15 amp.	.08/ft.	16.00
		ft. Shielded hook-up wire, ___ conductor # ___		
	100	ft. Microphone cable 2/c Belden Type #8422 #22	.07/ft.	7.00
	6	Connectors, Cannon male cable type Type XL-3-12C	.99/c	5.94
	2	Connectors, " female " Type XL-3-11C	1.02	2.04
	4	Connectors, " Female Wall Recept. Type XL-3-35 (single)	2.90	11.60
		Collins Announcer complete with Two TT-200 Turntables, Audax Tone Arms and Cartridges.		

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BROADCAST SALES PROPOSAL

ITEM	QTY.	DESCRIPTION	UNIT PRICE	TOTA
		STUDIO TECHNICAL EQUIPMENT (cont.)		
39	2	PB-190 Playback 19" Playback Units	595.00	1,19
		P-150 Playback		
40	1	AR-190 Recording Amplifier 19" Record Amplifier		38
		A-150 Recording Amplifier		
		RC-RP Remote Control		
		RC-P Remote Control		
		RC-R Remote Control		
		AMS-3 Automatic Switcher		
		AMS-4 Automatic Switcher		
		Console Cabinet		
		Console Cabinet		
		Desk Wing Console		
		Desk Wing Console		
		Cartridge Storage Rack		
		Cartridge Storage Rack		
41	1	200-C Magneraser Bulk Tape Eraser		1
42	10 Bxx	70-Second Tape Cartridge (10 bxx 6 cartridges each)	17.40	17
43	2 "	70-Second Tape Cartridge 2 " "	17.40	2
44	5	3½-Minute Tape Cartridge	3.25	1
45	5	5½-Minute Tape Cartridge	3.75	1
46	2	10½-Minute Tape Cartridge	4.75	
47	2	16-Minute Tape Cartridge	6.75	1
48	1	31-Minute Tape Cartridge		1
49	1	3½-Minute Alignment Tape		
		M-151 Bulk Tape (1700′)		
		Series 300 Blank Cartridges		
		Series 600 Blank Cartridges		
		Series 1200 Blank Cartridges		
		TOTAL NET BROADCAST PRICE		$18,3

Note: The lists of equipments and material herein quoted is subject to revision at the time the C.P. is granted to meet and specific requirement which may exist at that time.

CUSTOMER

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COLLINS

BROADCAST EQUIPMENT PROPOSAL

ERMS OF SALE

CASH

1. ______% down at time of order; balance payable in________days.

FINANCE TERMS

1. 33-1/3%down at time of order; ______% additional at time of shipment; balance payable in 36 equal monthly payments, including add-on interest of 4% per annum on the initial unpaid balance; first payment due and payable not later than 60 days after shipment of the transmitter.
2. This proposal will be converted by Collins to a note and conditional sales contract on Collins standard forms, both of which will be returned to the customer for his signature prior to shipment of the equipment.
3. The Buyer will supply a detailed legal description of the property on which the equipment is placed, including the name of the owner of the property and the extent of the Buyer's interest therein. This will be required for processing of the conditional sales contract.

CONTINGENT ORDER

1. ______% with order;______% on receipt of Construction Permit by customer. Balance payable in__________ equal monthly payments, including add-on interest of 4% per annum on the initial unpaid balance; first payment due and payable not later than________days after shipment of the transmitter.
2. CONTINGENCY CLAUSE
   Purchaser is in the process of filing an application with the FCC for a Construction Permit and this order is placed with the understanding that such application will be granted by the FCC. In the event that the Construction Permit is not granted, this order may be cancelled by either purchaser or seller by service of written notice on the other party within 30 days after notification by the FCC that the permit has been denied. In the event that the permit is denied by the FCC or customer elects to withdraw his application for a permit, seller shall refund in full any downpayment made hereunder by the purchaser. Prices on Collins-manufactured equipments are firm for a period of six months from this date. Prices on equipment manufactured by others than Collins will be billed at the price in effect at the time of shipment.

F.O.B. CLAUSE

1. Prices on all Collins-Manufactured equipment are F.O.B. Cedar Rapids, Iowa, except FM antennas, which are F.O.B. Evansville, Indiana. Equipment by others F.O.B. source. All prices are exclusive of any applicable, federal, state, or local, use or excise taxes, and are subject to change without notice. Equipment manufactured by others will be billed at the price in effect at time of shipment.
2. TRADE-IN EQUIPMENT TO BE DELIVERED F.O.B. CARRIER, POINT OF SHIPMENT.

CLAIMS CLAUSE

All claims to carrier for equipment damaged or lost in transit shall be made by the buyer. Collins will not in any way be obligated for the replacement of such equipment.

RESTOCKING CHARGE

All sales shall be final and merchandise not returnable without advance approval of Collins. Please contact our service repair department for instructions. If return for the buyer's convenience is allowed, a 15% restocking charge shall be made.

MISCELLANEOUS NOTES DELIVERY: SHIPMENT ON ALL MATERIAL HEREIN QUOTED CAN BEMADE WITHIN THIRTY DAYS TO FIVE WEEKS AFTER THE ORDER HAS BEEN MADE FIRM AND PAYMENT OF INDICATED33-1/3% DOWNPAYMENT RECEIVED MY MAIN OFFICE OF COLLINS RADIO COMPANY, CEDAR RAPIDS, IOWA.

[illegible]

CUSTOMER

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EXHIBIT 4
Sec. IV, paras. 2(b) & 4(

While the analysis of the attached program proposal shows 48.4% commercial and 51.6% sustaining programming, applicant wishes to state that this is simply an initial programming proposal and one that the applicant plans to put into effect at the start of operations of the proposed station. After the initial period of operation has passed, applicant hopes to have a number of the sustaining programs available for sale and to increase the commercial programming to 75% with 25% remaining for sustaining time.

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EXHIBIT 4
Sec. IV, par. 2(b)

Monday through Friday

A.M.

6:00	Sign on and News	N	WS
:05	Time in Tempo	ENT	RC
:45	" " "	ENT	RS
7:00	Farm Report	AG	LC
:15	News	N	WC
:20	Time in Tempo	ENT	RC
:30	" " "	ENT	RS
:45	" " "	ENT	RC
8:00	News Round Up	N	LC
:15	Time in Tempo	ENT	RC
:30	Harriman School News	ED	LS
:35	Time in Tempo	ENT	RC
:45	" " "	ENT	RC
9:00	News	N	WC
:05	Time in Tempo	ENT	RC
:30	Morning Devotions	REL	LS
:45	Melody Lane	ENT	RS
10:00	News	N	WC
:05	Melody Lane	ENT	RS
11:00	News	N	WC
:05	Melody Lane	ENT	RC
:15	" "	ENT	RC
:30	" "	ENT	RS
12:00	Market Reports	AG	WC
PM			
12:05	Rhythm Ranch	ENT	RC
:15	News Round Up	N	WC
:30	Rhythm Ranch	ENT	RC
1:00	News	N	WC
:05	Southland Serenade	ENT	RC
2:00	Salute to Swing (M-W-F)	ENT	RS
	Georgetown Forum (Tues.)	DISC	RS
	Youth Speaks (Thurs.)	DISC	LS
2:30	Salute to Swing	ENT	RC
3:00	News	N	WC
:05	Easy Listenin'	ENT	RS
4:00	News	N	WS
:05	Easy Listenin'	ENT	RS
5:00	News	N	WC
:05	Sports Today	T	LC
:20	Twilight Time	ENT	RC
:30	Vespers	REL	LS
:45	Twilight Time	ENT	RS
6:00	Sign Off		

Saturday

6:00	A.M.	Sign On and News	N	WS
:05		Western Ballad Time	ENT	RS
:30		" " "	ENT	RC
:45		Farm News of the Week	AG	LS
7:00		News	N	WC
:05		Western Ballad Time	ENT	RC
8:00		News	N	WC
:15		Time in Tempo	ENT	RS
:30		" " "	ENT	RC
9:00		News	N	WC
:05		Time in Tempo	ENT	RC
:30		" " "	ENT	RS
10:00		Our Schools in Action	ED	LS
:30		News	N	WS
:35		Tops in Pops	ENT	RS
11:30		News	N	WC
:35		Tops in Pops	ENT	RC
12:00		Noontime Devotions	REL	LS
12:15	P.M.	Guest Star	ENT	RS
12:30		News	N	WC
:35		Record Round Up	ENT	RC
1:00		County Agent	AG	LS
:15		Record Round Up	ENT	RC
:30		" " "	ENT	RS
2:00		News	N	WC
:05		At Your Request	ENT	RC
:30		At Your Request	ENT	RS
3:00		Harriman City Council	DISC	LS
:30		News	N	WC
:35		At Your Request	ENT	RC
4:00		I Love To Tell The Story	REL	RS
:30		News	N	WC
:35		Record Round Up	ENT	RC
5:00		Student of the Week	ED	LS
:30		Sports Today	Talks	LC
:45		Twilight Time	ENT	RC
6:00		Sign off		

Sunday

7:00	A.M.	Sign On - Hymns of all Churches	ENT	RS
8:00		News	N	WS
:05		Music For Moderns	ENT	RS
9:00		Around The World In Song	ENT	RC
:30		News	N	WS
:35		Around The World In Song	ENT	RS
10:00		Sunday School Lesson	REL	LS
:30		Hymn Time	ENT	RS
11:00		Church of the Air	REL	LC
12:00		News	N	WC
:05	P.M.	Sunday Serenade	ENT	RC
1:00		News	N	WC
:05		Sunday Serenade	ENT	RC
2:00		Our Civic Clubs	DISC	LS
2:30		Harriman High School Band	ED	LS
3:00		Sunday Serenade	ENT	RC
:30		News	N	WC
:35		Sunday Serenade	ENT	RC
4:00		Gospel Hour	REL	RS
5:00		News Round Up	N	WS
:15		Sunday Serenade	ENT	RS
6:00		Sign off		

Exhibit 5
Sec. IV, para. 7

It will be the policy of the applicant to make time available on an impartial basis for the discussion of public issues of importance in the listening area. Speakers will be chosen on the basis of their knowledge of the subject under discussion as well as ability to give a fair and reasonable presentation of the facts.

The station will actively seek out ideas worthy of discussion and participants for its discussion programs. It is the applicant's intention to have forum type programs whenever need for these programs arises.

FCC Form 714
July, 1961

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

Form Approved
Budget Bureau No. 52-R178

REQUEST FOR STATEMENT CONCERNING ANTENNA STRUCTURE NOTIFICATION TO FEDERAL AVIATION AGENCY

TO THE APPLICANT:

The Federal Aviation Agency (FAA) pursuant to revised regulations, effective July 15, 1961, requires notification of proposed antenna structure construction or alteration in accordance with "Part 626--Notice of Construction or Alteration; Criteria, Procedures and Rules for Determination of the Effect of Proposed Structures Upon the Use of Navigable Airspace." Accordingly, it will be necessary to indicate the status of your proposed antenna structure by checking the appropriate statement below and returning it to the Federal Communications Commission, Washington 25, D. C.

TO THE FEDERAL COMMUNICATIONS COMMISSION (FCC):

☐ Notice has been filed with the Federal Aviation Agency of the antenna structure proposed in this application.

F.A.A. Regional Office where filed: Southern Region

Date filed: September 18, 1961

By whom filed: John H. Mullaney & Associates

☐ The proposed antenna structure in this application has been analyzed under Part 626 of the F.A.A. Rules and it has been determined that notification is not required.

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F. L. Crowder d/b/a Harriman Broadcasting Co.		
EXACT NAME IN WHICH FCC RADIO APPLICATION WAS FILED	NAME OF RADIO SERVICE AND FCC FILE NUMBER (SEE BELOW)	SIGNATURE OF PERSON MAKING STATEMENT

JA 35

36

JOHN H. MULLANEY AND ASSOCIATES
A DIVISION OF MULTRONICS, INC.

Original

ENGINEERING EXHIBIT EE

HARRIMAN BROADCASTING COMPANY
HARRIMAN, TENNESSEE
SEPTEMBER 18, 1961

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ENGINEERING STATEMENT IN SUPPORT OF AN APPLICATION FOR A NEW STATION

970 KC

0.5 KW-D

JOHN H. MULLANEY AND ASSOCIATES
A DIVISION OF MULTRONICS, INC.

HARRIMAN BROADCASTING COMPANY

HARRIMAN, TENNESSEE

970 KC

0.5 KW-D

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2. Introduction
3. F.C.C. Form *301, Sections V-A and V-G
4. Figure 1 - Discussion of Conductivities, Effective Fields, Etc.
5. Figure 1-A - Tabulation of Azimuths, Radiations and Soil Conductivities Used for Allocation Studies
6. Figure 2 - Proposed 1,000 MV/M and 25 MV/M Contours
7. Figure 3 - Proposed 25, 5, 2 and 0.5 MV/M Contours
8. Figure 4 - Proposed Allocation Study (M-3 Map)
9. Figure 5 - 5-B - Proposed Allocation Study (Detail)
10. Figure 6 - Tabulation of Populations and Areas
11. Figure 7 - Method of Determining Populations and Areas
12. Figure 8 - Aerial Photograph
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CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Peter V. Gureckis, being first duly sworn upon oath, deposes and says that he is a member in the firm of John H. Mullaney and Associates, in Washington, D. C., that they have been retained by Harriman Broadcasting Company, to prepare an engineering statement, and that his qualifications are known to the Federal Communications Commission. He states that the calculations and exhibits in the accompanying report were made by him personally, under John H. Mullaney's direction, and that all facts contained therein are true of his own knowledge, except where stated to be on information or belief, and as to those facts, he believes them to be true.

Peter V. Gureckis
Peter V. Gureckis
JOHN H. MULLANEY AND ASSOCIATES

Subscribed and sworn to before me this 18th day of September, 1961.

NOTARY PUBLIC D.C.

My Commission Expires: Aug. 31, 1963

JOHN H. MULLANEY AND ASSOCIATES
A DIVISION OF MULTRONICS, INC.

HARRIMAN BROADCASTING COMPANY

HARRIMAN, TENNESSEE

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INTRODUCTION:

This Engineering Statement was prepared on behalf of the Harriman Broadcasting Company, which requests 970 KC, 500 watts, non-directional, daytime only, at Harriman, Tennessee.

This application creates a negligable amount of and the only interference sustained by the presently existing daytime operation of WNOX, Knoxville, Tennessee. Furthermore, this application will not create interference to any other presently existing or proposed standard broadcast stations.

This application, however, will receive interference from WAVE, Louisville, Kentucky (present and proposed operation); WIIN, Atlanta, Georgia and WWIT, Canton, North Carolina. The total interference resulting to this proposal, considering interference from existing and proposed radio stations, represents only 7.2 percent of the population within its proposed normally protected 0.5 mv/m contour.

Answers to questions in F.C.C. Form #301, Sections V-A and V-G, are incorporated in the following Figures 1 through 11. Also included, is F.C.C. Form #714, concerning antenna structures.

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FIGURE 1

HARRIMAN BROADCASTING COMPANY

HARRIMAN, TENNESSEE

I - Basis for Determining the Service and Interference Contours Shown in This Engineering Exhibit:

(A) - Conductivities:

The F.C.C. Conductivity Map, Figure M-3 in Part III of the Commission's Rules, has been used to establish the conductivities for the proposed contours of this application at Harriman, Tennessee, and the contours of all other stations shown in this report. If applicable, proofs-of-performance measurements for stations having such measurements, are used in checking adjacent and co-channel allocation problems.

(B) - Location of Contours:

All contours shown in this application were determined in the usual manner prescribed in the Commission's Rules. The "Equivalent Distance" method of computation, Section 3.183(c) in Part III of the Commission's Rules, for determining the location of contours where variable paths of conductivity intervene, has been used where applicable.

(C) - Unattenuated Field Intensities:

Figure 8, in Part III of the Commission's Rules, has been used to determine the non-directional unattenuated field intensity for the proposed antenna system. The unattenuated field intensity was determined to be 128.7 mv/m for a 500 watt operation. Inverse distance fields for other stations, operating non-directional, associated with the allocation problems in this application, were determined from Figure 8 in Part III of the Commission's Rules. Reference was also made to proofs-of-performance on file with the Federal Communications Commission in

PAGE 2 OF FIGURE 1 - HARRIMAN BROADCASTING COMPANY - HARRIMAN, TENNESSEE:

I - Basis for Determining the Service and Interference Contours Shown in This Engineering Exhibit (Continued):

(C) - Unattenuated Field Intensities (Continued):

determining the measured radiations for Radio Stations WAVE, Louisville, Kentucky; WIIN, Atlanta, Georgia; and WNOX, Knoxville, Tennessee. It was found; however, that the measurements on file for WAVE and WIIN did not extend in the pertinent directions toward the Harriman 0.5 mv/m contour even when considering a 10^0 off-set for the measured radial. Therefore, the Commission's Figure M-3 was used to establish the conductivities for their contours. Pertinent unattenuated field intensities for each of the stations concerned with this application are listed in the following paragraphs.

(D) - 25 MV/M Coverage to the Main Business Area and the City Limits:

Figure 2, attached, demonstrates that the proposed operation for this application will place better than the 25 mv/m signal over all of the main business and industrial area in addition to covering the entire City of Harriman, Tennessee. Consequently, no showing has been made as to the general character of the city as required by Paragraph 14-B, Page 3 of Section V-A, F.C.C. Form #301.

(E) - Allocation Problems:

This application will create interference to the existing operation of Radio Station WNOX, Knoxville, Tennessee, as shown in the Engineering Exhibit EE, Figure 5-A.

The present operations of Radio Stations WIIN, Atlanta, Georgia; WWIT, Canton, North Carolina; and the present and proposed operation of WAVE, Louisville, Kentucky, will cause interference to be received by this proposal, as shown in Figure 5.

PAGE 3 OF FIGURE 1 - HARRIMAN BROADCASTING COMPANY - HARRIMAN, TENNESSEE:

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I - Basis for Determining the Service and Interference Contours Shown in This Engineering Exhibit (Continued):

(E) - Allocation Problems (Continued):

With the above exceptions, this application does not create interference to any other presently existing or proposed radio stations.

PAGE 4 OF FIGURE 1 - RADIO STATION WCIN - CINCINNATI, OHIO:

III - EQUIPMENT (Continued):

(E) - Technique Used in Making Impedance Measurements (Continued):

This procedure is the same as set forth by the manufacturer.

IV - METHOD OF DETERMINING POWER INPUT:

Figures 4 and 5 are a tabulation and plot of the test antenna resistance measurements. The base impedance for the antenna at 1480 KC was found to be 19.0 +j 2.7. This is a reasonable impedance for the antenna when consideration is given to the top-loading. The power output of the transmitter was determined by the direct method. The base current was held as closely as possible to 3.63 amperes in order to obtain a constant output of 250 watts. The transmitter output power and the input power to the antenna was maintained in accordance with the Commission's Rules.

V - STATION OPERATION:

The test transmitting apparatus was under constant control and attendance of Paul L. Brown, Thomas F. Schoenang, and Paul B. Cram, all having first class radio-telephone licenses. Station logs were maintained in accordance with the Commission's Rules and are attached to this report as Figures 16 through 16-I.

VI - TECHNIQUE USED IN MAKING FIELD INTENSITY MEASUREMENTS:

Field intensity measurements were made on the WCIN test antenna between August 22, 1961 and August 31, 1961. All measurements were taken using good engineering techniques and were analyzed by this office. A total of eight radials were run on the test antenna. They are: N 9° E, N 54° E, N 99° E, N 144° E, N 189° E, N 234° E, N 279° E, and N 324° E.

The N 189° E radial was selected in order to determine the effective conductivity over the main business and industrial areas of the City of Cincinnati, as requested by the F.C.C.. The other seven radials, spaced

FIGURE 1-A

44

HARRIMAN BROADCASTING CO.

HARRIMAN, TENNESSEE

TABULATION OF AZIMUTHS, RADIATIONS, AND SOIL CONDUCTIVITIES USED FOR ALLOCATION STUDIES

1. Proposed Harriman, Tennessee - 970 KC, 500 W-D:

Azimuth	Radiation (mv/m/KW)	Conductivity
N 0° E Thru N 360° E (In 10° Increments)	182	Figure M-3

2. Radio Station WWIT - Canton, North Carolina - 970 KC, 1 KW-D:

Azimuth	Radiation (mv/m/KW)	Conductivity
N 0° E Thru N 360° E (In 10° Increments)	190	Figure M-3

3. Radio Station WAVE - Louisville, Kentucky - 970 KC:

(A) - Present 5 KW, DA-1, U:

Azimuth	Radiation (mv/m)	Conductivity
155°	560 (Measured)	Figure M-3
158°	558 (Measured)	Figure M-3
161°	555 (Measured)	Figure M-3

(B) - Proposed 5 KW, DA-2, U:

Azimuth	Radiation (mv/m)	Conductivity
155°	560	Figure M-3
158°	560	Figure M-3
161°	560	Figure M-3

PAGE 2 OF FIGURE 1-A - HARRIMAN BROADCASTING CO. - HARRIMAN, TENNESSEE: --

4. Radio Station WIIN - Atlanta, Georgia - 970 KC, 5 KW, DA-D:

Azimuth	Radiation (mv/m)	Conductivity
350°	639 (Measured)	Figure M-3
351.5°	637 (Measured)	Figure M-3
352.5°	630 (Measured)	Figure M-3
355.5°	620 (Measured)	Figure M-3
357.5°	617 (Measured)	Figure M-3

5. Radio Station WNOX - Knoxville, Tennessee - 990 KC, 10 KW, NON-DA-D, DA-N, U:

Azimuth	Radiation (mv/m)	Conductivity
20°	720 (Measured)	Proof & M-3
56°	680 (Measured)	Proof & M-3
90°	680 (Measured)	Proof & M-3
123°	650 (Measured)	Proof & M-3
165°	675 (Measured)	Proof & M-3
205°	765 (Measured)	Proof & M-3
239°	770 (Measured)	Proof & M-3
272.5°	770 (Measured)	Proof & M-3
308°	770 (Measured)	Proof & M-3
329°	790 (Measured)	Proof & M-3
343°	750 (Measured)	Proof & M-3

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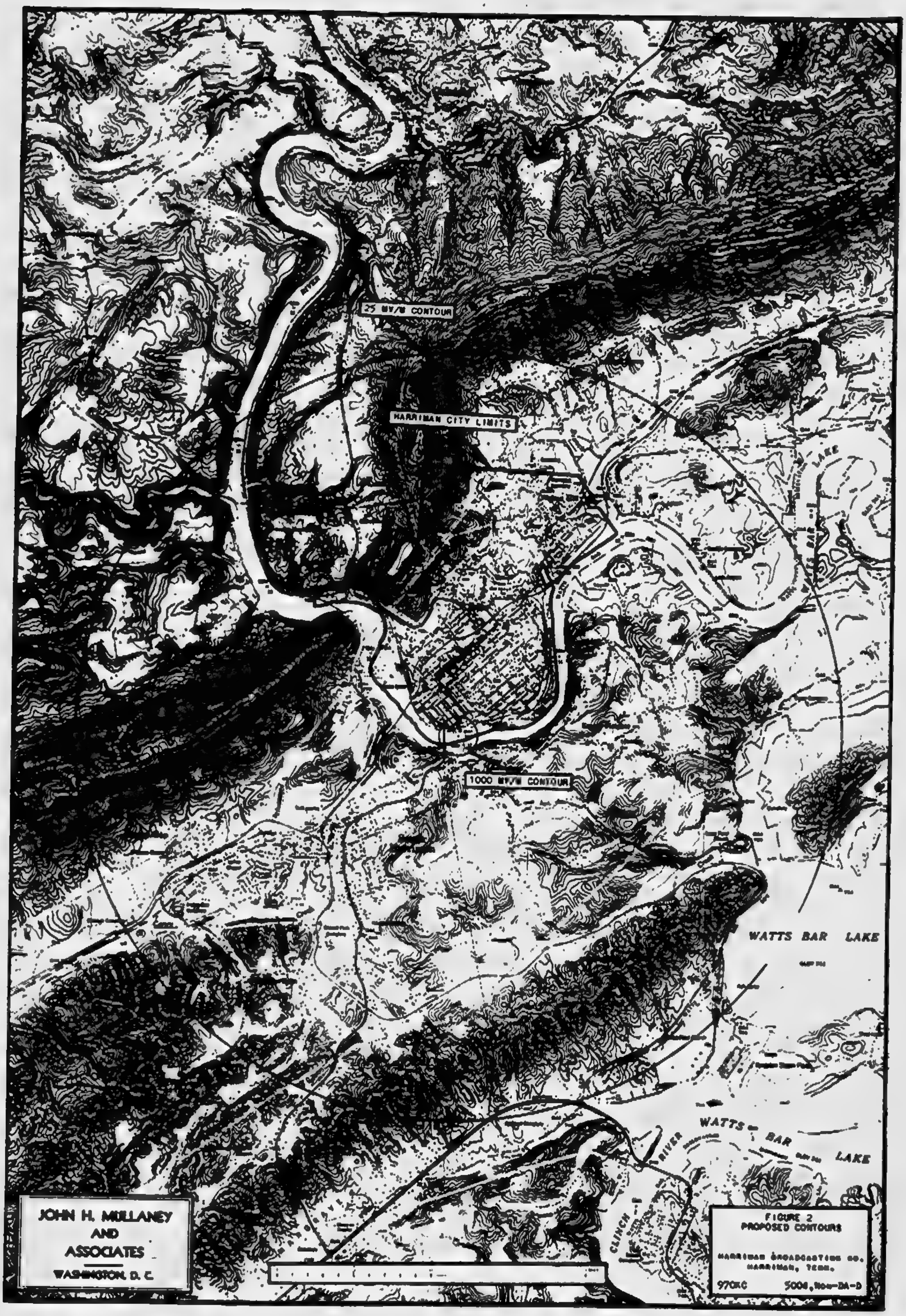
25 MV/M CONTOUR
HARRIMAN CITY LIMITS
1000 MV/M CONTOUR
WATTS BAR LAKE
WATTS BAR LAKE
CLINCH RIVER

JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

FIGURE 2
PROPOSED CONTOURS

HARRIMAN BROADCASTING CO.
HARRIMAN, TENN.
970KC 5000,Non-DA-D

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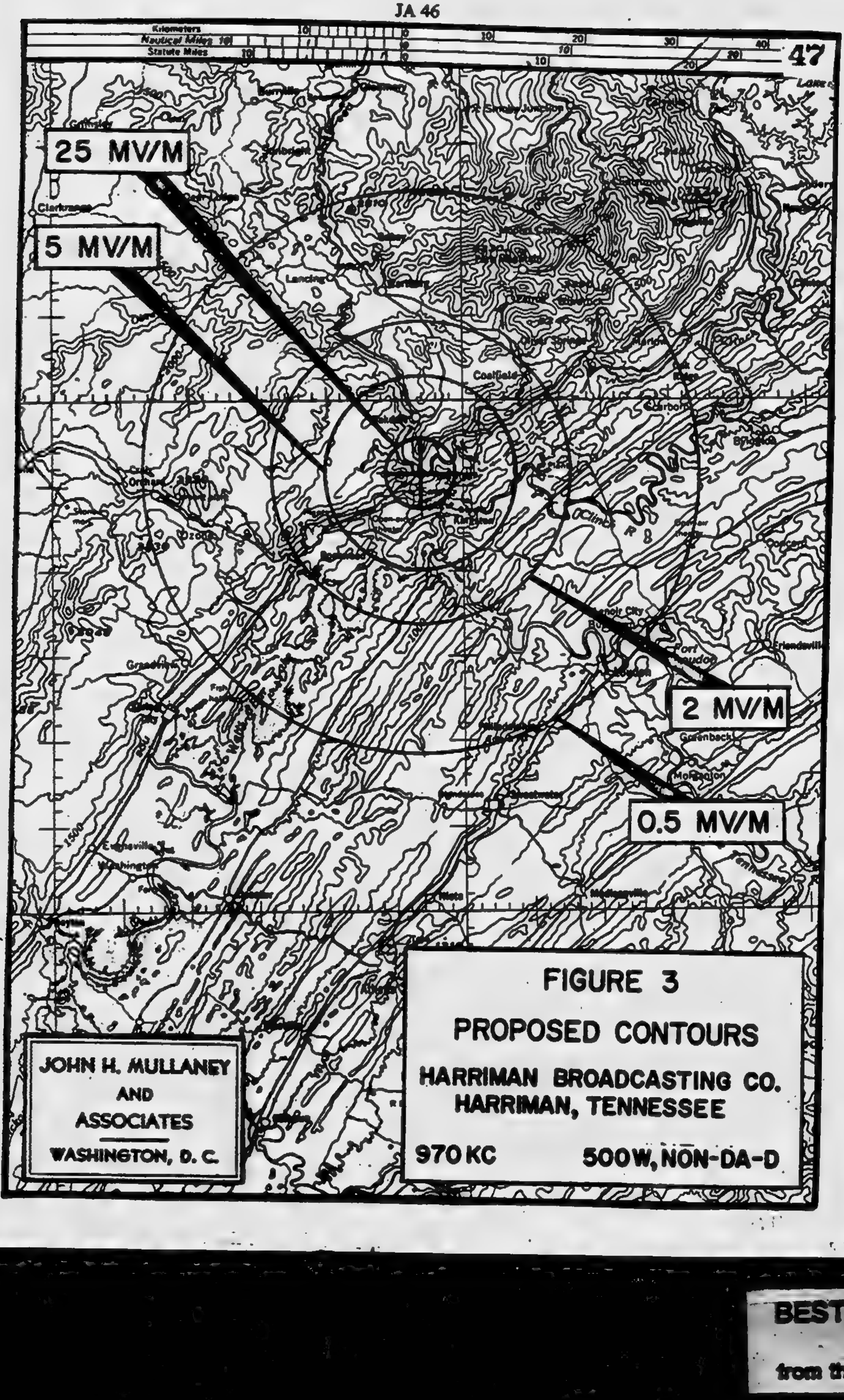
47
Kilometers
Nautical Miles
Statute Miles
25 MV/M
5 MV/M
2 MV/M
0.5 MV/M
Coalfield
Lenoir City
Fort Loudon
Greenback
Madisonville
Clinch R.

FIGURE 3

PROPOSED CONTOURS

HARRIMAN BROADCASTING CO.
HARRIMAN, TENNESSEE

970 KC 500 W, NON-DA-D

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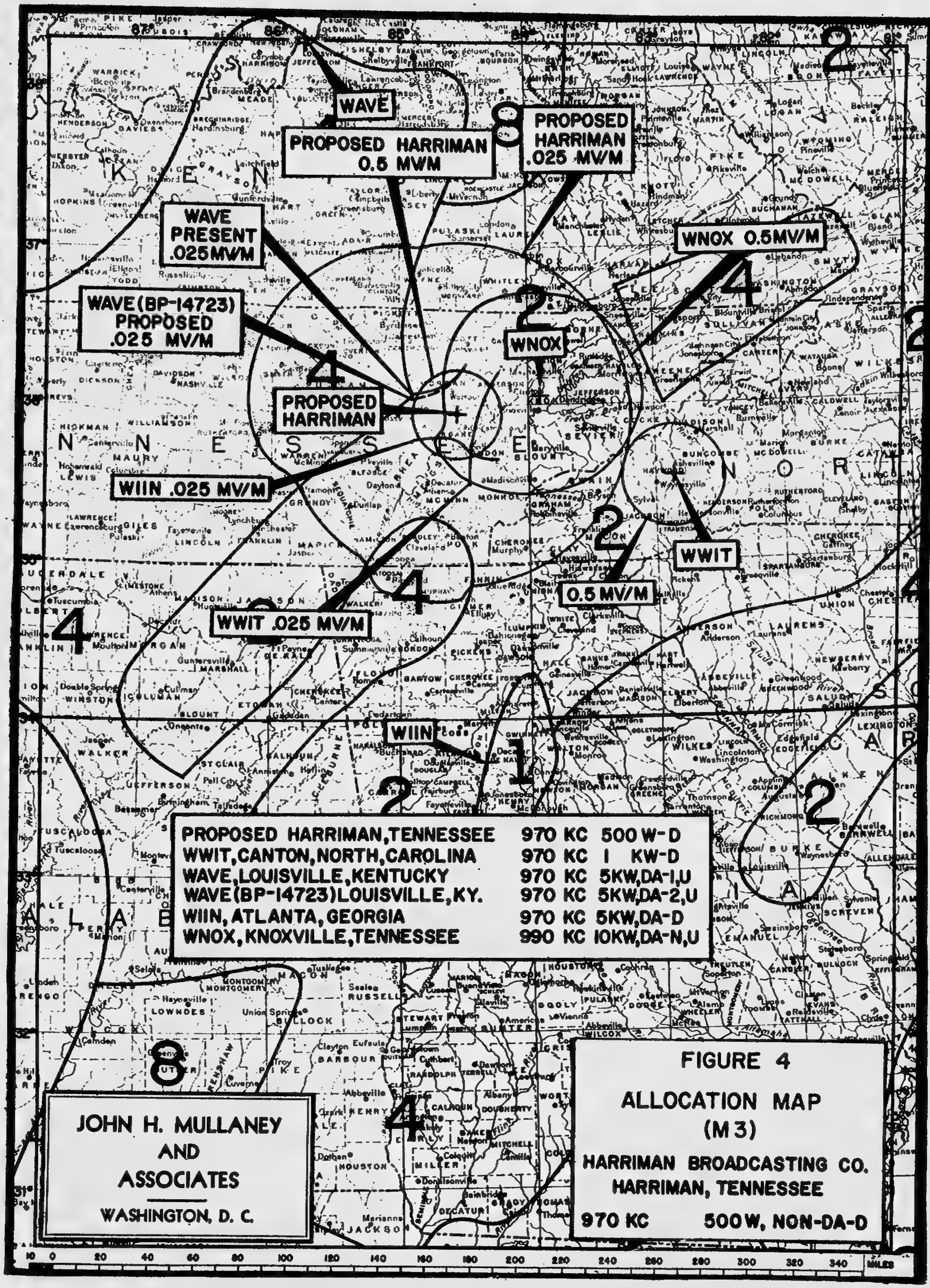
WAVE
PROPOSED HARRIMAN 0.5 MVM
PROPOSED HARRIMAN .025 MV/M
WAVE PRESENT .025MV/M
WAVE (BP-14723) PROPOSED .025 MV/M
PROPOSED HARRIMAN
WNOX
WNOX 0.5MV/M
WIIN .025 MV/M
WWIT
0.5 MV/M
WWIT .025 MV/M
WIIN
K E N
N N E S S E E
N O R T
A L A B
C A R
A
8
2
4
1
0
20
40
60
80
100
120
140
160
180
200
220
240
260
280
300
320
340
MILES

PROPOSED HARRIMAN,TENNESSEE	970 KC	500 W-D
WWIT,CANTON,NORTH,CAROLINA	970 KC	1 KW-D
WAVE,LOUISVILLE,KENTUCKY	970 KC	5KW,DA-1,U
WAVE(BP-14723)LOUISVILLE,KY.	970 KC	5KW,DA-2,U
WIIN,ATLANTA,GEORGIA	970 KC	5KW,DA-D
WNOX,KNOXVILLE,TENNESSEE	990 KC	10KW,DA-N,U

JOHN H. MULLANEY
AND
ASSOCIATES
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FIGURE 4
ALLOCATION MAP
(M3)
HARRIMAN BROADCASTING CO.
HARRIMAN, TENNESSEE
970 KC 500W, NON-DA-D

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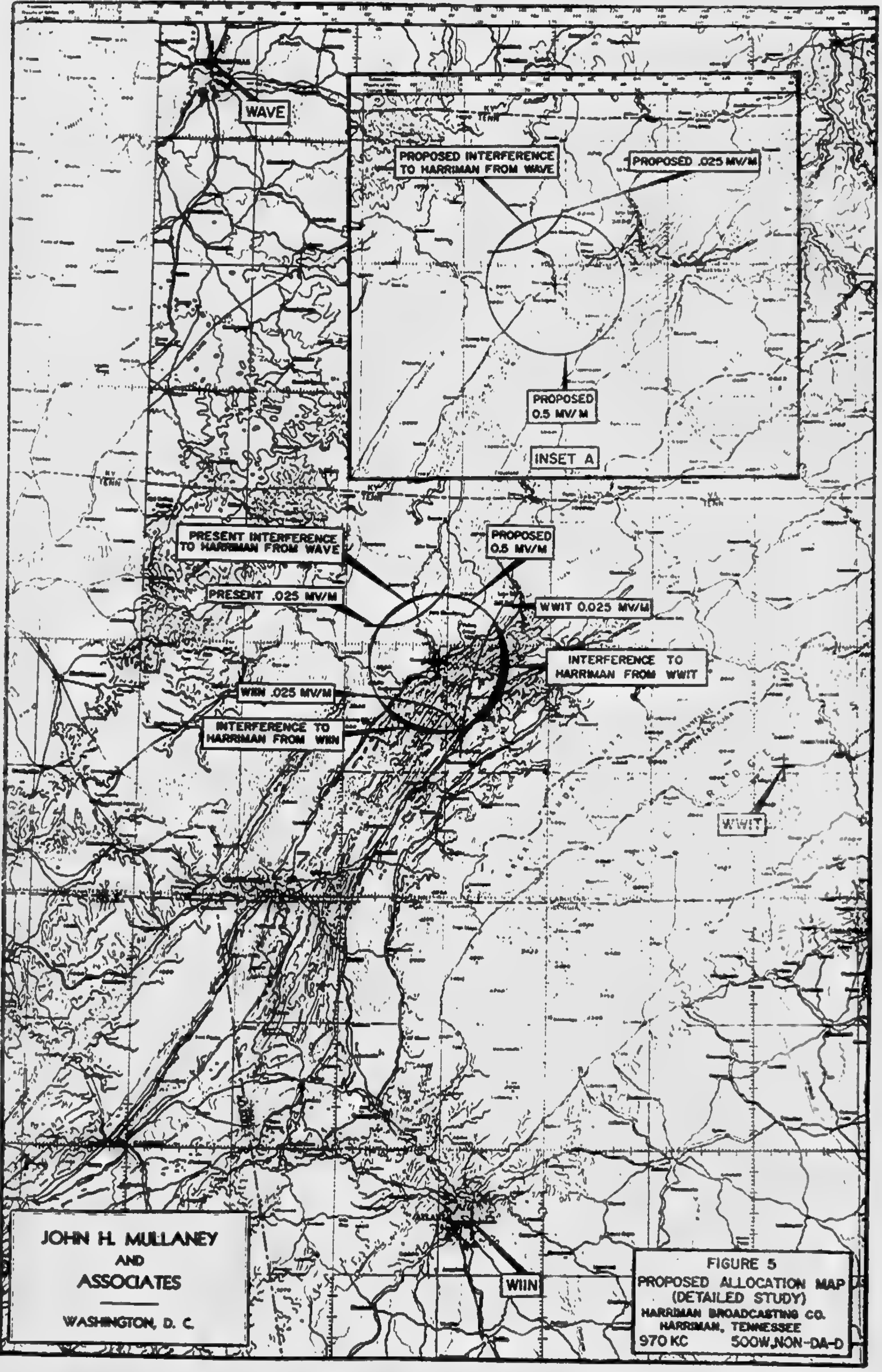
WAVE
PROPOSED INTERFERENCE TO HARRIMAN FROM WAVE
PROPOSED .025 MV/M
PROPOSED 0.5 MV/M
INSET A
PRESENT INTERFERENCE TO HARRIMAN FROM WAVE
PROPOSED 0.5 MV/M
PRESENT .025 MV/M
WWIT 0.025 MV/M
INTERFERENCE TO HARRIMAN FROM WWIT
WIIN .025 MV/M
INTERFERENCE TO HARRIMAN FROM WIIN
WWIT
WIIN

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FIGURE 5
PROPOSED ALLOCATION MAP
(DETAILED STUDY)
HARRIMAN BROADCASTING CO.
HARRIMAN, TENNESSEE
970 KC 500W,NON-DA-D

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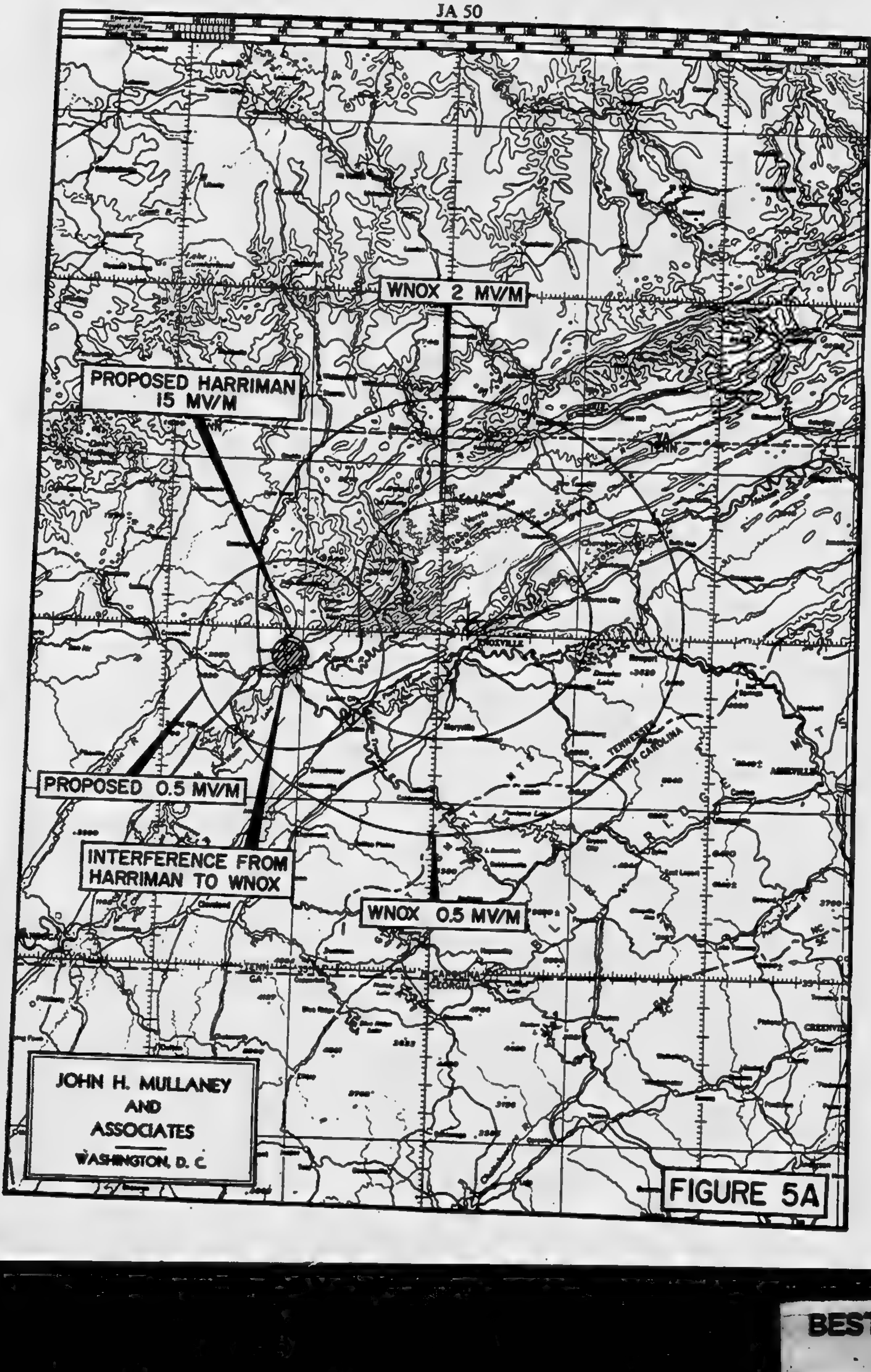

WNOX 2 MV/M
PROPOSED HARRIMAN 15 MV/M
PROPOSED 0.5 MV/M
INTERFERENCE FROM HARRIMAN TO WNOX
WNOX 0.5 MV/M
KNOXVILLE
VA
TENN
TENNESSEE
NORTH CAROLINA
ASHEVILLE
GREENVILLE
GEORGIA

JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

FIGURE 5A

BEST COPY
from the original

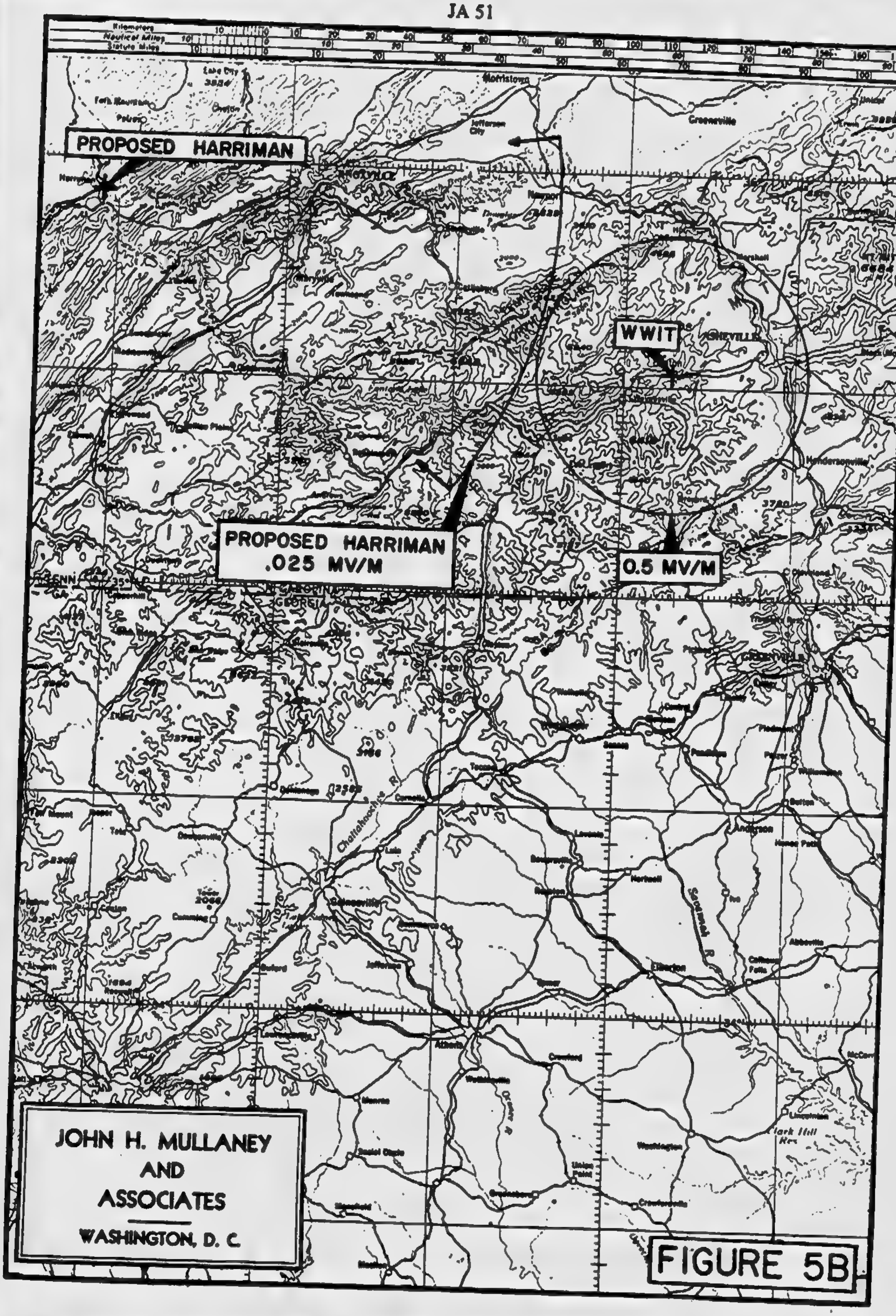

Kilometers
Nautical Miles
Statute Miles
PROPOSED HARRIMAN
Morristown
Greeneville
WWIT
ASHEVILLE
Hendersonville
PROPOSED HARRIMAN
.025 MV/M
0.5 MV/M
TENN.
GEORGIA
Chattahoochee R.
Gainesville
Anderson
Elberton
Athens
Washington
Crawfordville
Clark Hill Res.
JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

FIGURE 5B

AVAILABLE
bound volume

FIGURE 6

HARRIMAN BROADCASTING CO.

HARRIMAN, TENNESSEE

TABULATION OF POPULATIONS AND AREAS

1. Proposed Operation - 970 KC, 500 W, NON-DA, Daytime:

Contour (mv/m)	Population	Area (sq. mi.)
1,000	Less Than 300	.042
25	9,790	19.1
5	20,209	128.5
2	35,444	320.4
0.5	66,353	1,134
Interference from WIIN	280	16.8
Interference from WWIT	4,254	49.9
Interference from WAVE (Present)	186	6.3
Total Interference (Includes Present WAVE)	4,720 (7.1%)	73.0 (6.44%)
Interference-Free	61,633	1,061
Interference from WAVE (Proposed)	265	7.0
Total Interference (Includes Proposed WAVE)	4,799 (7.2%)	73.7 (6.5%)
Interference-Free	61,554	1,060.3

2. Interference to WNOX from Proposed Harriman, Tennessee:

WNOX - Knoxville, Tennessee - Present Operation - 990 KC, 10 KW, NON-DA, DA-N, U:

Contour (mv/m)	Population	Area (sq. mi.)
0.5	580,590	6,240
Interference from Proposed Harriman	616 (.11%)	31.1
Interference-Free	579,974	6,208.9

BEST COPY
from the original

FIGURE 7

HARRIMAN BROADCASTING CO.

HARRIMAN, TENNESSEE

METHOD OF DETERMINING POPULATIONS AND AREAS

1. POPULATIONS:

The population within each of the contours shown in this report were determined by superimposing the contours on a Minor Civil Division Map and then estimating the percentage of population within the contours. The 1960 U. S. Census was used as a basis for establishing populations.

In cases where a contour divides a Minor Civil Division, uniform distribution of population was assumed in order to obtain the population within the contour.

Cities between the 2 and 0.5 mv/m contours, having a population of 2,500 or more persons, were excluded from the population count.

2. AREAS:

The areas within all of the contours illustrated in this application were determined by the use of a polar planimeter and computations.

The populations and areas are tabulated in Figure 6 in answer to Question 13 of F.C.C. Form #301.

AVAILABLE
bound volume

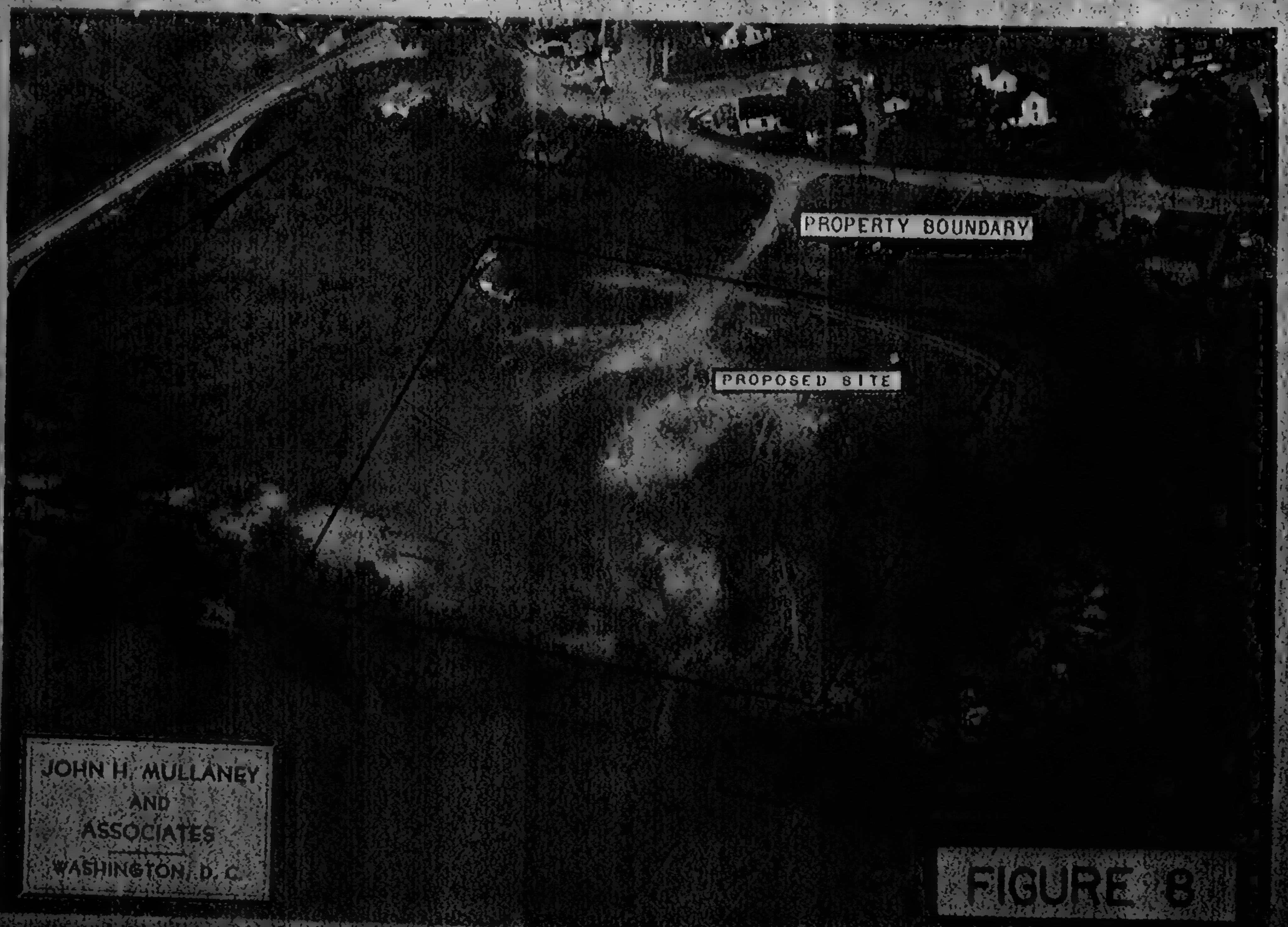

PROPERTY BOUNDARY
PROPOSED SITE
JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

FIGURE 8

BEST COPY
from the original

GROUND SYSTEM:

120 RADIALS, 253.5 FEET LONG, EVENLY SPACED AND BURIED AROUND THE BASE OF TOWER WITH A 24'BY24' SCREEN.

EASEMENTS WILL BE OBTAINED BEYOND THE PROPERTY LIMITS FOR EXTENDING RADIALS TO FULL LENGTH.

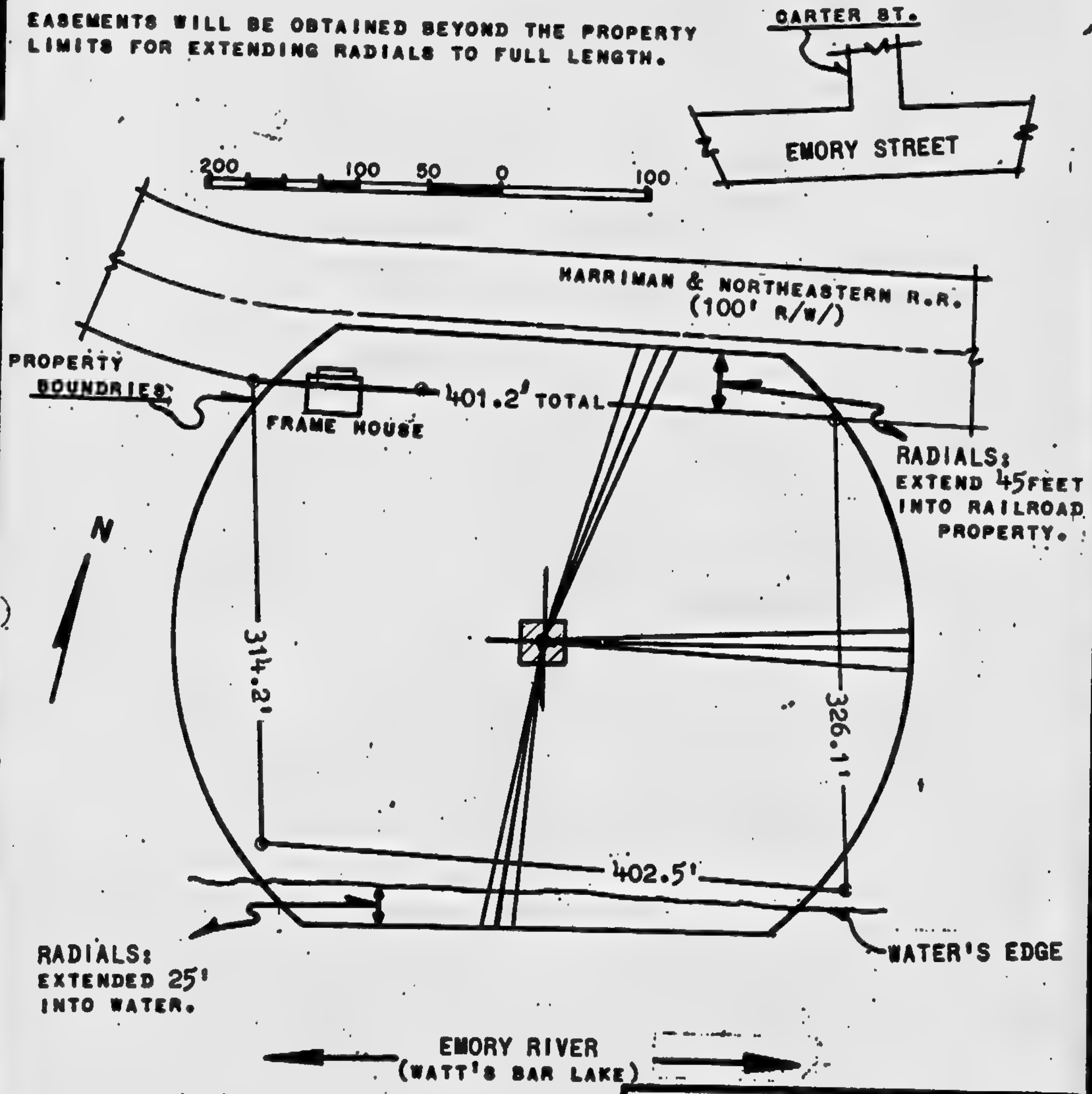

CARTER ST.
EMORY STREET
200
100
50
0
100
HARRIMAN & NORTHEASTERN R.R.
(100' R/W/)
PROPERTY BOUNDRIES
FRAME HOUSE
401.2' TOTAL
RADIALS: EXTEND 45FEET INTO RAILROAD PROPERTY.
N
314.2'
326.1'
402.5'
RADIALS: EXTENDED 25' INTO WATER.
WATER'S EDGE
EMORY RIVER
(WATT'S BAR LAKE)

FIGURE 9
PLAT & ANTENNA GROUND SYSTEM

HARRIMAN BROADCASTING CO.
HARRIMAN, TENN.

970KC 500W, NON-DA-D.

JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

AVAILABLE
bound volume

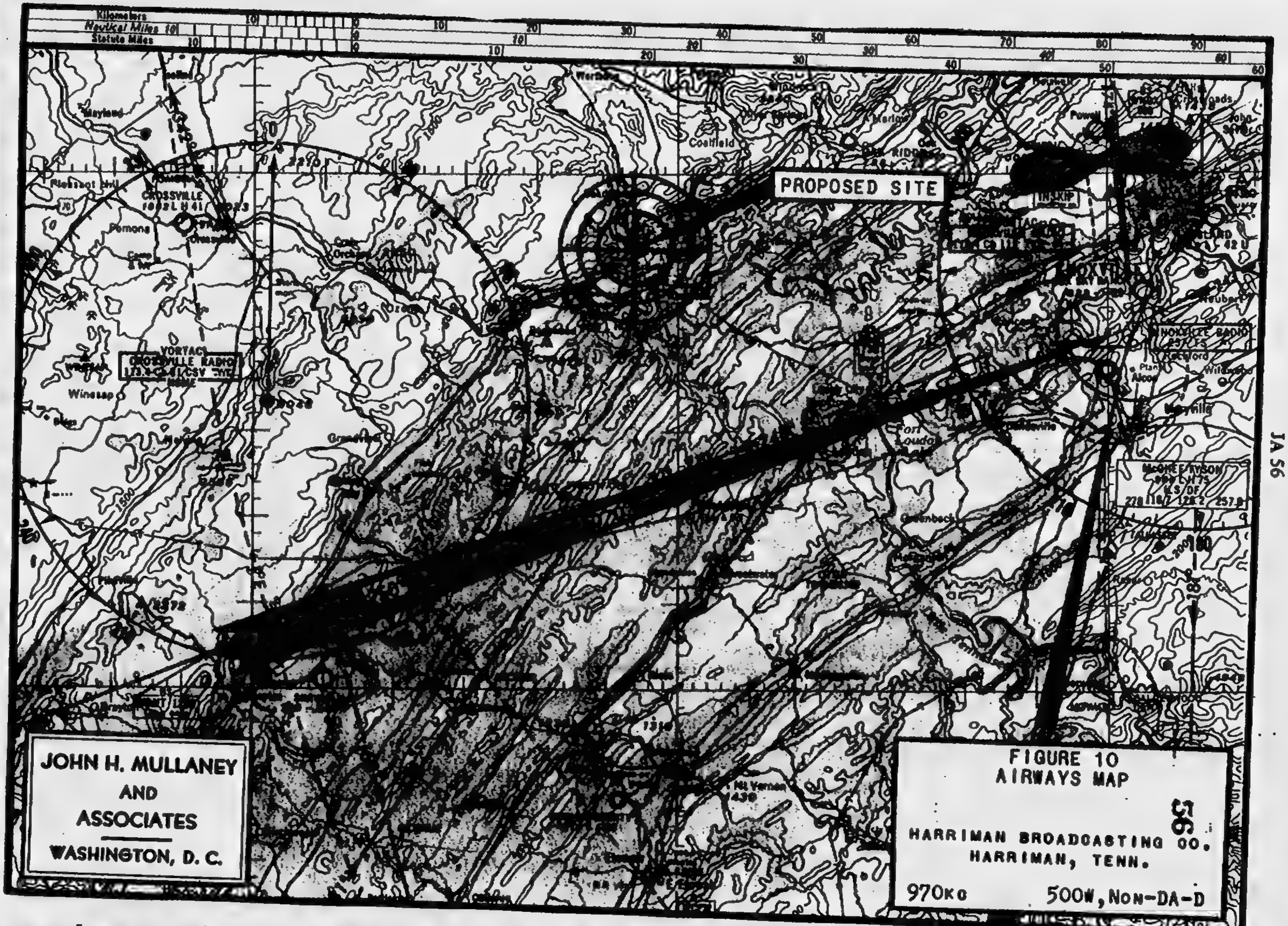

Kilometers
Nautical Miles
Statute Miles
PROPOSED SITE
CROSSVILLE
Crossville
Pomona
VORTAC
CROSSVILLE RADIO
Winesap
Coalfield
Oak Ridge
Fort Loudoun
McGHEE-TYSON
Maryville
Rockford
Pleasant Hill
Mt Vernon
1430

FIGURE 10
AIRWAYS MAP

56

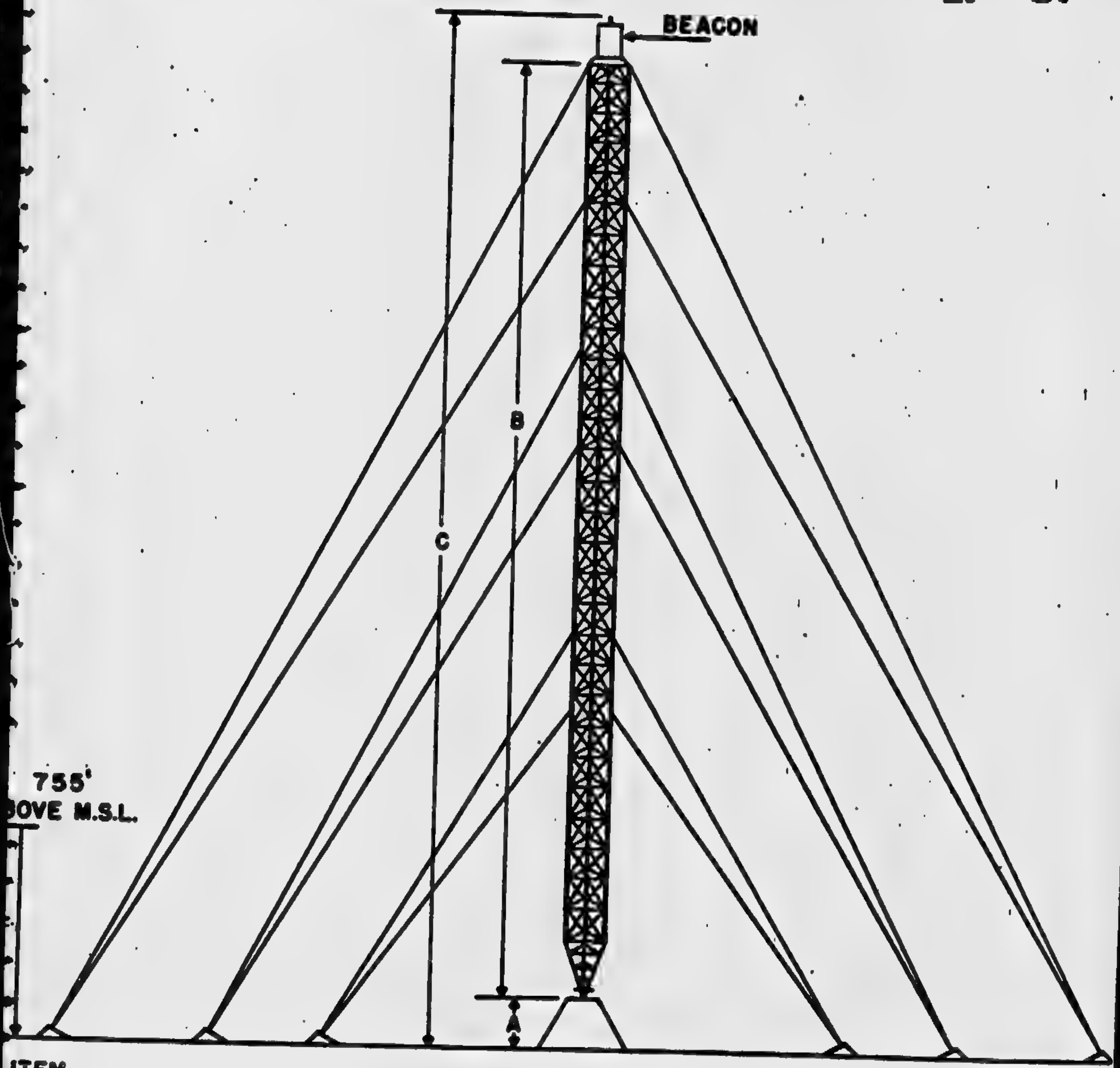
HARRIMAN BROADCASTING CO.
HARRIMAN, TENN.

970KC 500W, NON-DA-D

JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

BEST COPY

PAINTING AND LIGHTING: IN ACCORDANCE
WITH F.A.A. SPECIFICATIONS.



ITEM	DESCRIPTION	HEIGHT IN FEET
A	INSULATOR AND FOUNDATION	5'
B	TOWER	200'
C	OVERALL HEIGHT ABOVE GROUND	208'

JOHN H. MULLANEY
AND
ASSOCIATES
WASHINGTON, D. C.

FIGURE 11
TOWER SKETCH

HARRIMAN BROADCASTING CO.
HARRIMAN, TENN.

970KC .500W, Non-DA-D

AVAILABLE

LAW OFFICES
KRIEGER & JORGENSEN
2011 EYE STREET, N. W.
WASHINGTON 6, D. C.

SEYMOUR KRIEGER (1913-1960)
NORMAN E. JORGENSEN
LOUIS SCHWARTZ
ROBERT A. WOODS

TELEPHONE
337-6313

RECEIVED
Nov 13 1961
F. C. C.
OFFICE OF THE SECRETARY

November 13, 1961

Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

In re BP-15,122

Dear Mr. Waple:

On behalf of F.L. Crowder d/b/a Harriman Broadcasting Co. we are filing herewith in triplicate an amendment to the application above referenced for a new standard broadcast station at Harriman, Tennessee.

If there are any questions in connection with this matter, it is requested that they be referred to the undersigned.

Very truly yours,

KRIEGER & JORGENSEN

By Norman E. Jorgensen
Norman E. Jorgensen

Attachments

BEST COPY A
from the original

RECEIVED
Nov 13 1961
F.C.C.
OFFICE OF THE SECRETARY

F.L. Crowder d/b/a
HARRIMAN BROADCASTING CO.
Harriman, Tennessee

Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

In re BP-15,122

Dear Mr. Waple:

We wish to amend our application referenced above for a new standard broadcast station at Harriman, Tennessee, in the following respects:

We wish to add a new Exhibit (Exhibit 6) to Section IV in response to paragraph 10 of that section. Exhibit 6 consists of letters evidencing our efforts in surveying the community and its needs.

Section V-A at paragraph 4 and Section V-G at paragraph 1 should be amended to show the street address of the transmitter location as "Emory Street". As will be seen by Figure 9 of the engineering, this is the correct designation of this street and does not represent a change in location, therefore the coordinates given in Sections V-A and V-G do not have to be changed.

COPY TO [illegible]

Respectfully submitted,

HARRIMAN BROADCASTING CO.

By F. L. Crowder
F. L. Crowder

Attachments

Subscribed and sworn to before me this 8th day of November, 1961

R. H. McCain
Notary Public

]SEAL] My commission expires 8-29-62

AVAILABLE
bound volume

EXHIBIT 6
Section IV, para. 10

GEORGETOWN UNIVERSITY
RADIO AND TELEVISION ACTIVITIES
WASHINGTON 7, D. C.

63

19 October 1961

OFFICE OF [illegible]
NOV 13 1961

Mr. F. L. Crowder
P.O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

I will send you the Georgetown University Radio Forum regularly, without charge, and the only stipulation is that you will return the tape to us promptly after you have used it.

Since we are a tax free institution, you have the priviledge of using the educational rate of mailing at nine cents per tape.

Under separate cover, we are sending you a brochure of the Georgetown University Forum and a list of the recent topics and speakers who have appeared on our program.

Would you please let me know when you plan to start broadcasting this series.

Sincerely,

Francis J. Heyden, S.J.

Francis J. Heyden, S.J.
DIRECTOR

BOARD OF EDUCATION
JAMES D. MATHIS, PRESIDENT
MRS. HAL H. JONES, SECRETARY
WALLACE AUSTIN
FRANK N. BENSEY, JR.
W. L. HAMILTON
WINSTON W. TAYLOR

Harriman City Schools

Harriman, Tennessee

C. R. BLACK, SUPERINTENDENT
NORMAN C. CLAY, SUPERVISOR
O. M. BALLARD, PRINCIPAL
HIGH SCHOOL
MRS. F. D. GEASLAND, PRINCIPAL
CENTRAL ELEMENTARY
CAY HAUN, PRINCIPAL
CUMBERLAND SCHOOL
FRED J. INGRAM, PRINCIPAL
WALNUT HILL SCHOOL
FRED R. DAVIS, JR., PRINCIPAL
JAMIESON ELEMENTARY
MRS. JAMES S. KRING,
VISITING TEACHER

October 13, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

It was with pleasure that I learned of your proposed application for a new radio station here. We believe this would be a great help to our educational activities in Harriman.

I was especially happy to learn that you propose to program a regular time for news from the school on a daily basis, as well as a weekly program by our band. Both these activities will be most welcomed by us and you can be assured of our cooperation in trying to make both of real benefit to the school and to the community.

We believe that the public should know more about actually what is happening in our educational systems today and the changes that are seen from day to day. Broadcast time would serve this purpose for reaching the greatest number of persons, and naturally the more opportunities we have to reach the people will enhance the efforts. In addition to the dissemination of this information, the actual training of the students in the various phases of research and preparation of the program material will be most valuable.

I have found in the past experience that you are willing to cooperate with the school system in its various activities. I believe this will be of great benefit to the people of this area if you are successful in getting into operation with a new broadcast facility.

Again, let me say I welcome the news that you are planning your application. I extend my wishes for your success in this effort and your continued success in operation. You can be assured of my cooperation and that of our city educational system insofar as is my authority concerned.

Sincerely,

C. R. Black

C. R. Black, Superintendent
Harriman City Schools

CRB/hj

Tennessee FARM BUREAU FEDERATION
BOX 313 COLUMBIA, TENNESSEE PHONE EV 8-7872

October 4, 1961

Mr. F. L. Crowder
P.O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

Thank you very much for your letter concerning our weekly Farm Bureau program. We would be very happy to supply you with the program as soon as your proposed new station goes on the air. We are now serving forty-four stations once each week with the program, featuring general farm news, public interest interviews, etc.

We appreciate very much your interest and we wish you success with your application. We shall look forward to hearing from you.

Sincerely,

Murray Miles Jr.

Murray Miles, Jr.
Ass't. Director of Information

MM,Jr:am

EPH E. MADDY
ESIDENT
RGE C. WILSON
E-PRESIDENT
GILLIS
E-PRESIDENT
N A. MERRILL
RETARY
RLES ATTWOOD
ASURER, TRUSTEE
RLES M. TREMAINE
ASURER AND TRUSTEE-EMERITUS
GARET A. STACE
ISTANT TO THE PRESIDENT
RGE G. MACKMILLER
ISTANT TREASURER
RD A. MADDY
TROLLER

NATIONAL MUSIC CAMP
Guiding America's Gifted Youth
ORCHESTRA - BAND - CHOIR - RADIO - DRAMA - DANCE - ART
Interlochen, Michigan

AFFILIATED WITH THE UNIVERSITY OF MICHIGAN

DONALD R. BELCHER, TRUSTEE
RETIRED TREASURER, AMERICAN
TELEPHONE AND TELEGRAPH CO.
ROSCOE O. BONISTEEL, TRUSTEE
ATTORNEY-AT-LAW, FORMER REGENT
THE UNIVERSITY OF MICHIGAN
FRANKLIN DUNHAM, TRUSTEE
CHIEF OF RADIO AND TELEVISION
U.S. OFFICE OF EDUCATION
HOWARD HANSON, TRUSTEE
DIRECTOR, EASTMAN
SCHOOL OF MUSIC
WILLIAM E. KNUTH, TRUSTEE
MUSIC COMMISSIONER,
SAN FRANCISCO ART COMMISSION
MRS. MARK OSTERLIN, TRUSTEE
CLYDE VROMAN, TRUSTEE
DIRECTOR OF ADMISSIONS,
THE UNIVERSITY OF MICHIGAN
JUDITH WALLER, TRUSTEE-EMERITUS

October 12, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Sir:

Your letter to Dr. Maddy regarding our recorded program material has come to my attention, and your interest is appreciated.

Enclosed is an order blank with a short description of the 1961 series of programs, including price information. Also available are ppograms from previous series still on file.

I feel that this material would fill your sustaining slots in an excellent fashion, providing unusual programming of a quality nature.

Sincerely,

L. D. Greilick

L. D. Greilick, Chief
Radio Division

LDG/s

AN EDUCATIONAL INSTITUTION INCORPORATED NOT FOR PROFIT

JIM ADKISSON,
COMMANDER
O. C. WRIGHT,
1ST. VICE COMMANDER
GEORGE GODDARD,
2ND. VICE COMMANDER
GENE GARY,
L. O. CARSON,
VANCE STEWART,
AND CURRENT POST OFFICERS
EXECUTIVE COMMITTEEMEN

Newman-Davis Post No. 53

Harriman, Tennessee

E. D. EDWARDS, ADJUTANT
C. W. ADKISSON, SR.
SERVICE OFFICE
BEN B. HAMILTON,
FINANCE OFFICE
H. F. RUSSELL,
SERGEANT-AT-ARMS
ARVILLE SPARKS, CHAPLAI
CHARLES BACON, HISTORIAN

10-13-61

Freeman Crowder
Hargarave Street
Harriman, Tennessee

Dear Mr Crowder:

American Legion Post 53 would like to take this opportunity to thank you for your offer of 'public service' advertising. To properly promote our legion projects in a successful manner, advertising is a 'must', and this coming by way of 'public service' over radio will aid us greatly.

Thanking you again for your kind offer and we remain

Sincerely yours,

Jim Adkisson

Commander

National Education Association

1201 SIXTEENTH STREET, N.W.
WASHINGTON 6, D. C.
ADAMS 4-4848

October 16, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

As yet, the National Education Association has not been able to provide stations with programming on a regular basis. As you may know, we do produce programs and program series from time to time throughout the year. Enclosed is a flyer describing our latest effort, a series of five-minute programs called "Parents Ask About School." Someday, perhaps, we hope to be able to produce quantity as well as quality programming. At present, however, the only such source of broadcast material on and about education is produced and distributed by the National Association of Educational Broadcasters which is located on the University of Illinois campus in Urbana, Illinois.

Many of our affiliated state education associations either produce broadcast material or cooperate with stations that do. So, I suggest you get in touch with Donald G. Sahli who is director of public relations for the Tennessee Education Association at 321 7th Avenue, N., in Nashville. I hope this information will be of some help to you in your application to the FCC.

Best regards,

R. Nelson

Ray Nelson
Assistant Director
Division of Press and Radio Relations

RN:dlb
Enclosure

CITY OF HARRIMAN

DEPARTMENT OF ACCOUNTS AND RECORDS

MUNICIPAL BUILDING

HARRIMAN, TENNESSEE

Oct.17,1961

Mr.Freeman L.Crowder
Harriman Broadcasting Co.
P.O.Box 464
Harriman,Tenn.

Dear Freeman:

Congbatulations on your decision to apply for a new broadcasting medium for Harriman. We shall look forward to the actual construction and operation of this new business and public information medium in Harriman and Roane County.

Your proposal to give public airing to more of our governmental activity in Harriman is welcomed by me as Mayor of the City. The public would be in a much better position to form its own opinion of our actions if it could hear its government in operation and if it could get a full and complete picture on the controversial issues Your plans as you have discussed with me will be welcomed and I will be at your servic to help fulfill your efforts.

Harriman is a growing community and this effort to establish another news medium is but one indication of strides forward. You certainly have the support of th city administration in this effort of yours.

Most Sincerely,

A B Foster
Mayor

ABF/T

JA 67

NGELISTS: E. R. Harper
James D. Willeford

NOUNCER: Phil Kendrick

1858 ● ORchard 4-9159

HERALD OF TRUTH

CHURCH OF CHRIST

5th & HIGHLAND

RADIO & TELEVISION PROGRAM

ELDERS:
E. A. Bedichek, Jr.
Frank Cawyer
M. E. Gilliland
J. W. Green
A. L. Haddox, Sr.
H. E. Hart
J. M. Patterson
John F. Reese
Lewis Smith
W. C. Smith
R. W. V
L. E. Weathers

ABILENE ● TEXAS

20

October 16, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

We shall be most happy to have Herald of Truth scheduled on your station on a sustaining basis.

On receipt of further information, we will make all necessary arrangements for supply of tapes.

Gratefully yours,

HIGHLAND CHURCH OF CHRIST

John F. Reese

John F. Reese

vb

ROANE COUNTY CHAPTER
AMERICAN RED CROSS
HARRIMAN, TENNESSEE

October 20,1961

Mr.F.L.Crowder,
P.O.Box 464
Harriman,Tennessee.

Dear Mr.Crowder:

We have learned of your intentions to place another radio station in Harriman,and are very happy that you have seen fit to include a definite plan in your programing for the local Red Cross Chapter.

Our program of Public Information is very necessary,and we feel that your plans will help us in our work here tremendously. We shall look forward to a further discussion and actual planning when your successful application is final. It is a great satisfaction to us to know that the area will have this new source of information.

Thank you for your consideration of the local Red Cross and its activities in your program schedule. Y ou will have our full support.

Very sincerely,

Harold H. Booth ERS

Mrs.Esther R.Stone
Executive Secretary
For:Harold H.Booth
Chairman
Roane County Chapter

THE BRITISH BROADCASTING CORPORATION
630 FIFTH AVENUE
NEW YORK 20, N. Y.

WASHINGTON, D. C. NEWS OFFICE
NATIONAL PRESS BUILDING
TELEPHONE EXECUTIVE 3-1465
CABLES: NEWSCASTS, WASHINGTON

NEW YORK OFFICE
TELEPHONE CIRCLE 7-0656
CABLES: BROADCASTS, NEW YORK

October 19, 1961

Mr. F. L. Crowder
Harriman Broadcasting Company
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

Thank you for your letter of October 11 requesting information about BBC taped programs.

Since your station is not yet on the air, it's difficult to send you a list of BBC programs that would be available to you. We make it a policy to offer our programs to only one station in a given market area (this usually represents a radius of fifty miles). There is no way of knowing in advance of your station's opening if there would be any overlaps.

May I suggest you write us again when your station is in operation. We will be delighted to send you all the necessary information regarding available programs at that time.

With kindest regards,

Sincerely yours,

Marcia Kramer

Marcia Kramer

THE UNIVERSITY OF TENNESSEE
DIVISION OF UNIVERSITY EXTENSION
14 AYRES HALL
KNOXVILLE

October 19, 1961

DEPARTMENT OF BROADCASTING SERVICES
RADIO STATION WUOT
U-T TELEVISION
TAPE NETWORK

Mr. F. L. Crowder
Harriman Broadcasting Company
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

Dr. Kenneth Wright has asked me to answer your letter of October 11, 1961.

You may be assured that the Broadcasting Service of the University of Tennessee will be delighted to cooperate with you in supplying programming material for your new station in Harriman.

Our programs are supplied on an exclusive basis to the stations that we serve. For that reason, our committments are already in effect for this school year for Harriman. However, I feel that we would be able to supply at least one 15-minute program each week starting next fall. The program would be informational in nature and would probably be concerned with current affairs, assuming that next year's programs follow the present pattern.

We appreciate your interest in broadcasting U-T radio programs and will be happy to cooperate with you when you start the station.

Sincerely,

Herb Howard

Herb Howard
Manager-Tape Network

JA 71

74

ROANE COUNTY
Chamber of Commerce

A PROGRESSIVE COUNTY

October 17, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

Congratulations! Your news about the application for a new radio station in Harriman is certainly exciting. From a personal viewpoint I will welcome the added choice of radio programming for the area, and from the viewpoint of my official capacity as President of the Roane County Chamber of Commerce we will most heartily welcome a new business and new voice into our community. I can see the far-reaching possibilities that this effort can bring about in our area.

The Chamber of Commerce is ever looking to the future for bigger and better opportunities for the entire Roane County area. We feel that despite some minor setbacks which have occurred in the recent past, the future of this area is extremely bright. I personally feel that such ventures as what you are proposing are big parts of the whole which we can expect for the future here.

I am especially gratified to learn of your desire to make a part of your time available to public information through Chamber activities. I realize that you cannot make a definite proposal until your program log is in its final stages for actual broadcast, but I feel from talking with you that your efforts to inform the public will resolve into worthy programs utilizing the Chamber activities and other information of public enlightenment.

You can depend on complete cooperation in your efforts from the Roane County Chamber of Commerce.

Most sincerely,

W. K. Warren
President-Roane County Chamber of Commerce

WKW:pam

SERVING YOUR INTEREST IN HARRIMAN — ROCKWOOD — KINGSTON — OLIVER SPRINGS

THE HARRIMAN BUSINESS ASSOCIATION
HARRIMAN, TENNESSEE

October
26
1961

Mr. Freeman L. Crowder
P.O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

I am happy to hear of your plans for a new radio station in Harriman. We of the Harriman Business Association feel that there is a great hope for a renewed business and civic effort in the community and we know that an added public facility will be of great help in this effort.

I am particularily interested in the plans you have discussed with me for giving the people a better understanding of the businesses and business men through special programs that you plan as a public service. I believe that the citizens of the area will benefit from a closer knowledge of the people with whom they are doing business.

You can depend on our organization collectively and individually to support you in these public service ventures. Your proposed program schedule which included us as well as the civic organizations should create a feeling of civic pride which will be of great benefit to all.

You have my personal wishes and those of our group for great success in your proposed activity.

Kindest regards.

Very truly yours,

James Harmon

James Harmon, Pres.
Harriman Business Association

HIGHWAY TENNESSEE PATROL

GREG O'REAR
COMMISSIONER OF SAFETY - STATE OF TENNESSEE - NASHVILLE

19 October, 1961

Mr. F. L. Crowder
Harriman Broadcasting Company
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

This will acknowledge your letter of October 11, 1961.

The Department of Safety furnishes written and pre-recorded traffic safety announcements to the radio stations of Tennessee. You may rest assured that we would certainly appreciate your cooperation in our efforts to make Tennessee streets and highways safer.

These announcements are furnished on a monthly basis with written "spots" for station announcers or local patrol personnel. In addition, each month we send tape recordings of traffic safety reminders by Commissioner O'Rear.

We sincerely feel that radio is one of the best means available to reach a driver at the time when he needs it most. That is, when he is actually behind the wheel.

I wish you every success in your new endeavor and you may rest assured of our fullest cooperation with your station.

Very truly yours,

Ronnie Bledsoe

Ronnie Bledsoe
Public Relations Director

RB/ejb

SOUTHERN
BAPTISTS'
Radio and Television Commission
STATION RELATIONS DEPARTMENT

October 20, 1961

Mr. F. L. Crowder
P. O. Box 464
Harriman, Tennessee

Dear Mr. Crowder:

It was good to learn of your application for a new radio station in Harriman. We wish you every success as you begin this new broadcasting venture.

Sometime ago, the other station in the community discontinued broadcast of The Baptist Hour, so we shall be happy for you to carry both The Baptist Hour and "MasterControl"*, if you so desire. Since neither program is currently broadcast in Harriman, you may have your choice of either or both if you like.

As you may know, these tapes are provided free of charge and we pay postal costs both ways. If you need audition tapes or any additional information about the programs, please let me know.

Sincerely yours,

Director of Station Relations

James T. Johns: bw

6248 Camp Bowie Boulevard • P. O. Box 12157 • Fort Worth 16, Texas • PErshing 8-2188 • Paul M. Stevens - Dire

NEVILLE MILLER
ARTHUR H. SCHROEDER
JOHN B. KENKEL
JOHN F. BANKSON, JR.

PHONE: METROPOLITAN 8-2183

LAW OFFICES
MILLER & SCHROEDER
MUNSEY BUILDING
WASHINGTON 4, D. C.

December 10, 1962

RECEIVED
DEC 10 1962
F. C. C.
OFFICE OF THE SECRETARY

Secretary
Federal Communications Commission
Washington 25, D. C.

Dear Sir:

Transmitted herewith find original and fourteen copies of "Petition to Deny" filed on behalf of Folkways Broadcasting Company, Inc., licensee of Radio Station WHBT, Harriman, Tennessee, re application of F. L. Crowder tr/as Harriman Broadcasting Co. for construction permit for a new station in Harriman, Tennessee, File No. BP-15122.

Very truly yours,

ARTHUR H. SCHROEDER

81

ORIGINAL

RECEIVED
DEC 10 1962
F. C. C.
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

In re Application of 12/10/62)
)
F. L. Crowder tr/as)
HARRIMAN BROADCASTING CO.)
Harriman, Tennessee) File No. BP-15122
)
For Construction Permit for New)
Station, 970 kc, 500 w, Day)

Mr. Rawson (5)
List A.

Orig +14

PETITION TO DENY

Comes now *FOLKWAYS BROADCASTING COMPANY, INC., licensee of Radio Station *WHBT, Harriman, Tennessee, by its attorneys, pursuant to Section 309(d) of the Communications Act of 1934, as amended, and Section 1.359(i) of the Commission's Rules, and requests the Commission to deny the above-styled application or to designate it for hearing upon the within-stated issues, naming the petitioner as respondent in any such hearing. WHBT submits that the application for a new station in Harriman, Tennessee, must be denied for the following reasons:

I. JURISDICTIONAL STATEMENT

A. The Captioned Application

1. The captioned application of F. L. Crowder (hereinafter Crowder) is for a permit for a new broadcasting station at Harriman, Tennessee, to

operate on 970 kc with 500 w, daytime. The application was filed on October 4, 1961, and amended on November 13, 1961, to show the street address of the proposed transmitter location and by an additional exhibit for the application, consisting of certain letters which the applicant submitted as "evidencing our efforts in surveying the community and its needs." The Crowder application appeared on the "cut-off list" issued November 2, 1962 (FCC 62-1141, Mimeo. 26264). That Public Notice

specified December 10, 1962, as the date by which any petition pursuant to Section 1.359(i) of the Commission's Rules might be filed with respect to the Crowder application. The within petition is being filed by December 10, 1962, and accordingly is timely.

B. The Petitioner Is A Party In Interest

2. The petitioner is the licensee of broadcasting station WHBT, Harriman, Tennessee, with licensed facilities of 1600 kc, 5 kw, daytime. Station WHBT obtains the revenues with which it operates and produces programs from the commercial advertisers in Harriman and elsewhere within its service contours, particularly within Roane County, and from advertisers elsewhere located who desire to reach the listeners in Harriman and WHBT's service area. The station proposed by Crowder will directly compete with WHBT for advertising revenues, for news and talent sources, and for listeners in Harriman and Roane County. The competition will be immediate and direct in Harriman and in the two other cities or towns in Roane County, namely, Kingston and Rockwood. The engineering

portion of the Crowder application projects a 5 mv/m contour over Kingston and a 2 mv/m contour over Rockwood. In each of those latter communities, WHBT has advertising clients, news sources and program sources, as well as listeners.

3. The competition for the limited revenues available in Harriman and elsewhere in Roane County, and for news and talent sources, and for listeners, will result in economic injury to WHBT. Further, as is hereinafter shown in detail, the economic injury will result in a degradation of the quality of service WHBT is now providing the public. WHBT, the petitioner, is thus a party in interest with respect to the captioned application, and pursuant to Section 309(d) of the Communications Act, has standing to file and have considered the instant petition.

Sanders Brothers v. F.C.C., 309 U.S. 470 (1940); Camden Radio v. F.C.C., 220 F.2d 191; Carroll Broadcasting Co. v. F.C.C., 258 F.2d 440; Geoffrey A. Lapping, 23 R.R. 919; Hugh Jordan Stock, FCC 62-792, Mimeo. 22279; William L. Ross, 23 R.R. 992.

II. A GRANT OF THE APPLICATION WOULD CONTRAVENE THE PUBLIC INTEREST

A. The New Station Would Destroy Or Reduce Available Service

(1) Inability Of Community To Support Another Station

4. Harriman, Tennessee, had a 1960 population, according to the U. S. Census of that year, of 5,931. This figure was less than the 1950

population of 6,389. The decline, in the face of a national population increase, resulted from an outmigration of high school graduates unable to find employment and of younger families who resolved the question of whether to sever community ties or face unemployment by a decision to leave. Harriman is in Roane County, which had a 1960 population of 39,133. The area's economic problems commenced with the decline of the coal industry, and the substantial portion of the economic base formerly provided by that industry has not been supplanted notwithstanding community efforts to reduce the problem of chronic unemployment in recent years. In 1961, following a survey made by the Tennessee Department of Employment Security, Roane County was found to be in a "small labor market area with substantial and persistent unemployment".

5. According to a study by the Area Development Committee of Roane County, released July 7, 1962, the unemployment problem has not been solved, but rather is intensifying. The study points out that automation and the improvement in the production processes at the nearby Oak Ridge Atomic Energy plants, where a number of Roane County residents were employed, resulted in layoffs and thus contributed to unemployment

in Roane County. A slight pickup of employment of area residents for the construction of the Kingston Steam Plant and the ferro-alloy plant of Merritt, Chapman & Scott Corporation was only temporary, until the completion of the work. The latter firm employed 750 males during full operation, but when one unit proved economically unfeasible it was closed and dismantled, and it is estimated that the employment for all ferroalloy operations will be only 450. The July, 1962 study goes on to relate that the efforts of various groups in the county to secure industry in the past several years have, with few exceptions, been unsuccessful. The study states that "the greatest failure in the county in recent years has been the inability to provide employment for all those on the labor rolls."

6. The Area Development Committee reports that it would be necessary to establish some fifteen hundred job opportunities (1,000 for males and 500 for females) in order to take care of the normal unemployment in the county, and that this figure does not include job opportunities for those who would be available if suitable jobs were present. The Committee's report goes on to state that in addition there is a need to establish employment opportunities for 350 high school graduates entering the labor market annually so that they will not have to outmigrate to other cities and sections of the country in order to obtain employment.

7. The State of Tennessee Department of Employment Security studies have shown that there is a large percentage of the county's population in need of additional income to maintain a reasonable economic living condition. The unemployment and underemployment, and the resulting effect on available income, have depressed other facets of the county's economy. Station WHBT, Harriman, suffered a gross loss of $40,762.93 for the first five years of its operation by petitioner, Folkways Broadcasting Company, Inc., from July 1, 1957, to June 30, 1962. As both the

foregoing and following paragraphs indicate, the cumulative loss figure can be traced to the depressed economic condition which has prevailed in Roane County.

8. The total Retail Sales in Roane County in 1960 were only $29,798,000, according to Sales Management's "Survey of Buying Power", May, 1961.[1] However, even this figure was less than the County's total Retail Sales for 1959, which amounted to $31,170,000.[2] The low retail sales figures make inescapable the conclusion that retailers, the backbone of local radio economics, would not be in a position to support with advertising dollars another radio station in Roane County. Harriman, with only 5,931 population, could not reasonably be expected to generate a sufficient financial base for more than one radio station when it is recognized that the county in which it is located is itself small in population (39,133), is an economically depressed area, and has another existing radio station WRKH. The petitioner submits, based upon its experience and intimate knowledge of the situation, that the two existing stations in Roane County have exhausted the available revenues and that three stations simply could not survive. An unemployed or underemployed listener cannot respond to an additional advertising message, and commercial advertisers would have no reason to support three stations.

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[1] The relative smallness of this figure may be seen from the fact that it was almost one hundred million dollars less than the lowest of the first 200 counties in the "Survey of Buying Power" list of counties by volume of retail sales.

[2] "Survey of Buying Power", May, 1960.

9. The limited advertising dollars in Roane County are not all available to the radio stations there. Three weekly papers are published in the county and compete with the radio stations for advertising revenues.

In addition, newspapers from Knoxville and Chattanooga, television stations in Knoxville and Chattanooga, and radio stations in Knoxville have circulation, viewers and listeners in Roane County and solicit and carry some advertising of business institutions there. Finally, outdoor advertising and direct mail advertising also compete for the all too scarce advertiser's dollar.

10. Mr. Kenneth J. Crosthwait, president and majority stockholder of the petitioner corporation (Folkways), and general manager of WHBT for approximately five years past, has evaluated the question of the effect of an assignment of a third station to Roane County from the point of view of the economic support the existing stations and new station might expect. Mr. Crosthwait has had better than fifteen years' experience in considering and dealing with the economic aspects of broadcasting. He has sold both newspaper and radio advertising, and he owned and managed stations in Kentucky and Florida before coming to Harriman. Mr. Crosthwait estimates that considering the competitive media picture with the economic conditions prevailing in Roane County, the maximum potential revenues for Roane County stations in their market area are approximately $125,000 a year, with two stations operating in the county. However, if a third station is assigned, the market audience will be further divided and some presently available dollars would go

to other media because many of the advertisers in the market would not, in view of the economic problems there, be in a position to increase their advertising expenditures sufficiently to use three stations to reach the desired audience. Faced by the alternative of spending more money to reach the prospective customer by radio or of using another advertising media, a number of the Roane County commercial institutions would be forced to choose the latter. This result would flow both because of the advertisers' limited means and the fact that an increase in the

advertising budget would not be warranted, even if possible, in light of the prospective customers' relative inability to buy commensurate with the additional investment. Mr. Crosthwait estimates that the available radio revenues would decrease to approximately $85,000.

11. WHBT's annual operating expenses are now between $85,000 and $90,000. Even if these expenses were reduced, as they would have to be by cutting back service and programming quality (see Paragraphs 16-21, infra) if the captioned proposal is granted, WHBT could not operate with revenues less than $60,000 a year. This would leave only $25,000 of available revenue in the entire market available to Roane County stations for the existing station at Rockwood and the new station, an obviously insufficient amount. In this connection it should be noted that the applicant, Crowder, estimates that the cost of operating his station in the first year would be $42,000.

12. In situations where the population and economic pictures were even better than here the Commission has recognized that a substantial question exists as to the community's ability to support another station. In William L. Ross, 23 R.R. 992, and Hugh Jordan Stock, FCC 62-792,, the applications were for a second station in Riverton, Wyoming, a community with a 1960 population of 6,845. The area's retail sales were $42,355,000. As above shown, Harriman's 1960 population was less than 6,000, and Roane County's total retail sales for that year were only $29,798,000. If the Ross and Stock figures "raise a serious question as to whether Riverton and the surrounding area contain sources of revenue sufficient to support the operation of two or more standard broadcast stations" (23 R.R. at 994), there can be no doubt that the economic base for the new station proposed by Crowder for Harriman, Tennessee, is absent. If another station is permitted to be established the limited revenues available for radio

broadcasting will not only preclude Crowder's station from operating effectively, but will create a situation in which neither the new station nor WHBT could operate except as "loss operations." The result would be the degradation and possibly elimination of existing programming. The community would wind up with two stations, neither of which could serve the listeners or meet the community needs to the same high degree now achieved by WHBT.

(2) The Diminution Or Destruction Of Service Which Would Result

13. The Commission is well aware that advertising revenues provide the funds with which all programming and all the services rendered by a radio station can be performed. At the present time, WHBT is providing Harriman and the surrounding area in Roane County with programming the petitioner believes to be, on the basis of the community's reaction, well-balanced, with particular emphasis on filling the needs and desires of local groups and organizations for radio time of a sustaining or public service character. However, the services rendered to the community are not limited to air time. Mr. Crosthwait and members of the staff of WHBT participate in local community activities so that the station may both keep its hand on the pulse of the community, so to speak, to ascertain the desires as well as to let the community know that WHBT is available for fulfillment of the needs. In addition to providing air time, WHBT staff members work with representatives of community groups in preparing copy for announcements, serving on promotional and publicity committees for groups so that their efforts may be directed in a professional and effective manner, and in making WHBT production facilities available.

14. The sustaining and public service programs, and the community activities of the station and its staff, would have to be curtailed if commercial revenues were reduced. As above noted, the station's average

annual operating expenses are between $85,000 and $90,000 a year. If revenues are reduced, the operating expenses would have to be cut back or the station would go off the air. The existence of the Crowder station would require WHBT to reduce its staff, to limit the amount of sustaining time given to public service groups and organizations, and to eliminate incidental expenses incurred by the station in working with these groups. The station might be able to stay on the air with operating expenses of around $60,000, but the public service and sustaining programs carried by the station would suffer from the retrenchment.

15. The threat to the community that it will lose or suffer a reduction in the service being provided by WHBT is real and apparent, and nowise simply speculative. There is attached hereto and made a part hereof the affidavit of Edgar B. Willis, Jr. Mr. Willis recites that a Mr. Scarborough,[3/] has stated that Crowder plans to get commercial support away from WHBT by establishing a rate for advertising which is 50% of that charged by WHBT. The competition which the new station would bring would thus not be on the basis of service to the listener but by commercial practices. To avoid Crowder's aim to "drive WHBT out of business" by the rate war the petitioner would be forced to meet the cut-rate advertising. The concomitant would necessarily be the reduction or suspension of some of the services to the community paid for by the present rate. Economies would have to be made in production, or additional commercial announcements carried to make up for the reduction in rate, or both, however reluctant WHBT would be to take such steps. The listener and others in the

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[3/] The same individual who acted for Crowder in obtaining letters submitted by the applicant as "evidencing our efforts in surveying the community and its needs." See Paragraph 34, *infra*.

community which have been relying on WHBT's activities would suffer as the Crowder station and WHBT were both reduced to minimum services for the community and more and more commercial announcements. No matter which station survived the rate contest, or even if both managed to survive, the total service available to the community would be substantially lessened.

16. As examples of the programs and services which the community of Harriman would lose if WHBT was forced to cease operations, or which would be lost to a significant degree if WHBT were required to reduce its staff and effectuate other economies to meet the Crowder competition, the following resume is submitted:

Your Social Security Reporter - This program is recorded in the studios of WHBT by the Social Security agent and is carried five days a week as a public service feature. In addition, WHBT also presents a fifteen-minute program on Sunday afternoon for social security.

Roane County Chamber of Commerce Programs - The Roane County Chamber of Commerce has had a county-wide fair in each of the last two years. On both occasions, WHBT erected a special radio display broadcasting unit at the fairgrounds and broadcast remote from the fair during the three days of the event. WHBT did this as a public service and was not compensated for either the additional work of the staff, the expense of the additional equipment, nor for the telephone line charges. WHBT's staff members also served as judges for several events and acted as master of ceremonies, again without compensation of any kind from the Chamber of Commerce, their salaries and expenses being paid by WHBT.

Child Care - WHBT has incorporated in the State of Tennessee a non-profit organization devoted to the helping of children in the Harriman - Roane County area. WHBT provides air time for appeals to listeners for clothes and other donations the station would go off the air. The existence of the Crowder station would require WHBT to reduce its staff, to limit the amount of sustaining time given to public service groups and organizations, and to eliminate incidental expenses incurred by the station in working with these groups. The station might be able to stay on the air with operating expenses of around $60,000, but the public service and sustaining programs carried by the station would suffer from the retrenchment.

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Child Care - WHBT has incorporated in the State of Tennessee a non-profit organization devoted to the helping of children in the Harriman - Roane County area. WHBT provides air time for appeals to listeners for clothes and other donations which might be used in easing the suffering of unfortunate children, and has sponsored fund-raising projects to provide medicine and clothing. The air time is, of course, not compensated for, nor are the other activities of the WHBT staff members in the "Child Care" project.

Civil Defense - WHBT has made remote broadcasts from the fallout shelter of the Roane County Civil Defense Director in Kingston. The hour-long broadcasts were made without compensation for telephone line charges, staff, or equipment. Additional live broadcasts were made from the station's studios. WHBT's station manager has served as Deputy Director of the county's Civil Defense organization.

17. WHBT pays to obtain certain programs which it carries on a sustaining basis because of the interest of its listeners and the desires of the community to have the program, as attested by surveys conducted by the station. For example, the program "Dr. Crane" is paid for by WHBT and carried on a sustaining basis six days a week. The program presents Dr. Crane's professional views on family problems, medicine and psychology. On five days a week, WHBT carries the fifteen-minute drama "Dr. Paul" which is leased from RCA and carried on a sustaining basis. WHBT incurs charges and expenses in order to carry such other programs as "What Does The Bible Say?", a fifteen-minute non-denominational program on the Scriptures, broadcast five days a week; "Children's Bible Hour", a religious program for children, carried each Sunday for thirty minutes; and "U. T. Faculty Program", a fifteen-minute discussion program presented by the University of Tennessee with subjects discussed by professors and teachers of the school who are knowledgeable of or authorities on the subject matter of the program.

18. WHBT makes its services, including equipment and staff, available to the schools in the area. For example, WHBT has recorded the Harriman High School band for subsequent airing on the station, recorded the Christmas songs of the elementary school and played them on the station, and recorded the South Harriman High School band and played the recording on the station. WHBT has given air time and staff activities for the preparation of announcements for fund raising projects to buy high school band uniforms and to promote high school ball games. Similarly, WHBT promotes the activities of the service clubs in its community, again with air time and staff activities.

19. In 1961, WHBT, for its own information, commenced to keep a record listing the name of the organization for which program time was given and the comparable value of the time, if sold. The record shows that in the calendar year of 1961, WHBT gave public service broadcasts which would amount to $35,000 in commercial time. In the first nine months of 1962, through September, WHBT has already devoted $29,700 in such time for public service broadcasts.

20. The assignment of a second station in Harriman would cause, as above indicated, significant reduction or destruction of public service programming. However, another effect of the assignment of a second station would be the division of an audience and the inability to continue to hold advertiser support of certain commercially sponsored programs which serve the interest of the public and the listener. For

example, WHBT has been able to find a commercial sponsorship for the program "Swap Shop", a remotely originated program on which listeners announce items they would like to trade or buy and on which announcements of lost or found items are carried, without cost to the individual for whom the announcements are made. The "H. G. Community Program" is a remote fifteen-minute program, carried five days a week, on which items of community news, public charitable appeals, public service announcements, and announcements of meetings of groups and organizations are carried. It is presently sponsored by a local merchant. Based on experience the petitioner believes that if the audience is divided between WHBT and another station it would be unfeasible for the sponsors of the two mentioned programs to continue their commercial sponsorship, and with lesser revenues available because of the new competition, WHBT would not be able to carry the programs. They would then be lost to the community and the listeners.

21. Finally, the second station and the division of audience which would result therefrom would give rise to a loss of sponsorhip or the necessity for charging a lesser rate for commercially sponsored entertainment programs. The quality of the staff producing the programs, and the content, whether recorded or live, would have to be cut back because of the lesser revenues available for such programs. The net result would be a loss to the listener of the present programs of WHBT.

22. In this connection it should be noted that WHBT's belief that it is providing a well-rounded program service, one that meets the needs, desires and interests of the listeners, is shared by the community. In the fall of 1961, a letter survey was conducted by an outside party and the results thereof tabulated by an independent certified public accountant. The survey inquiry letter was mailed to civic and business leaders in the Roane County area, by a Knoxville radio station representative, and the letter did not mention any call signs but simply asked for the respondents' views on the radio stations in Roane County. Some 97 replies were received, and as tabulated by the CPA, 84 replies mentioned WHBT as an outstanding station, listing personnel and management, good programming and reporting, cooperation in civic projects, and finally good reception as reasons for that opinion. Seventy-six of the ninety-seven respondents stated that they had used WHBT and found its service to be effective. Only five who had used WHBT did not make that latter reply.

23. WHBT does not believe that it should burden this petition with copies of correspondence it has received from every facet of the Harriman and Roane County community. Public service groups and organizations, churches and schools have all attested to the high regard in which the station and its services are held. Their unsolicited communications detail the type of cooperation, beyond air time, given by the station. WHBT stands ready to submit this voluminous material if the Commission so desires.

24. In sum, the petitioner submits that in view of the deleterious effect the Crowder station would have on WHBT's ability to serve, the listening public and the community would be the loser from any action by the Commission authorizing that broadcast station in the Harriman

community. For public interest reasons the Crowder application must be denied.

(3) The Economic Support Question Is Thus A Matter of Public Interest

25. In Carroll Broadcasting Co. v. F.C.C., 103 U.S. App. D.C. 346, 349, 258 F.2d 440, 443, the Court of Appeals made the following observation:

> "But, if the situation in a given area is such that available revenue will not support good service in more than one station, the public interest may well be in the licensing of one, rather than two, stations. To license two stations where there is revenue for only one may result in no good service at all. So economic injury to an existing station, while not in and of itself a matter of moment, becomes important when on the facts it spells diminution or destruction of service. At that point the element of injury ceases to be a matter of purely private concern."

It is that public interest point which is involved here. Because of the economic conditions the community cannot support two stations, and the assignment of a second station to Harriman will result in the destruction or diminution of the existing station. The Communications Act, with its requirement that an authorization be found to serve the public interest, convenience or necessity, will not permit of a grant where because of economic factors the effect thereof would be to destroy or substantially reduce the ability of an existing station, such as WHBT, to continue to provide the meritorious service it renders to its community. See, Geoffrey A. Lapping, 23 R.R. 919; cf., WHAS, Inc., 21 R.R. 929. It is clear, the petitioner submits, that the Crowder application must be denied because it would have that adverse effect on the public interest.

B. The Statutory Finding of Financial Qualification Cannot Be Made

26. In his application, Crowder estimates that he will obtain revenues in the amount of $50,000.00 for the first year of operation.

(Section III, Paragraph 1(a)). This estimate is made against a programming proposal which provides for 48.4% commercial time at the commencement of operation with "hopes to have a number of sustaining programs available for sale and to increase the commercial programming to 75%." (Section IV, Paragraph 4(b) and Exhibit 4). As hereinbefore shown, on the basis of studies made by the petitioner's president and general manager, the advertising revenues available in the economically depressed Harriman area for a second station in Harriman and a third station in Roane County, are closer to non-existence than to the unrealistic figure of $50,000.00 specified by Crowder. The petitioner avers that the estimate is unrealistic and that the station could not garner that amount of revenue.

27. In the William L. Ross case, 23 R.R. 992, the Commission questioned revenue estimates of only $40,000 for a second station in

Riverton, which had a population greater than Harriman's. There, too, the economic factors contra-indicating an ability of the community to support a second station were not as strong, the area Retail Sales figures suggesting some growth rather than the recession shown by the figures here. (Paragraph 8, *supra*). Even though Crowder's financial statement might be accepted as showing an ability to construct the station, long term financial problems which would be present in the Harriman area upon the licensing of the second station there preclude a finding of financial qualification or that the public interest would be served by a grant of the captioned proposal. *William L. Ross*, 23 R.R. at 993, 995

28. In light of the economic facts related in this petition, it is clear that the Commission's holding in the *Ross* and *Hugh Jordan Stock* cases is applicable here. In the cited cases, the Commission held:

> "First, the application and the pleadings raise a serious question as to whether Riverton and the surrounding area contain sources of revenue sufficient to support the operation of two or more standard broadcast stations. Second, because this question has been raised, the validity of the predicted revenues of the applicant, therefore, his financial qualifications have also been placed in doubt.
>
> * * *
>
> "...we would impose here, and in similar situations, an added burden upon the applicant, that of showing that its estimate or operating revenues is realistic when a serious question has been raised concerning the ability of the area to produce adequate revenue from those sources from which standard broadcast stations generally receive their support. We believe this additional requirement is necessary, not only to demonstrate that the applicant is financially qualified, but also to enable us to make the ultimate findings required by law, i.e., whether grant of the application in question would

> serve the public interest, convenience and necessity."
> 23 R.R. at 994-995.

Since neither the financial qualification nor the public interest finding can be made in the instant situation, the captioned application must be denied.

29. But going beyond the Ross and Stock principle, the applicant's financial qualifications are absent for yet another reason. This second element is the inability of the proposed station to operate in accordance with the proposed expense budget of $42,000.00. See Birney Imes, Jr., 17 R.R. 419, 436. Moreover, in this connection, it must be recognized that Crowder's financial proposal protrays the proposition, that the revenues will be relied upon to keep the station in operation after initial construction, the application containing the revenue estimate of $50,000 against the operating expense estimate of $42,000. (Section III, Paragraph 1(a)). Since the revenues will not be available, the inadequacy of the expense provision become more critical.

30. Crowder does not detail how the limited expense budget of $42,000 will provide for the expenditures he elsewhere commits himself to make, provide for salaries for a staff of "at least seven persons" plus himself as general manager (Section IV, Paragraph 12), and provide

for power costs, fuel costs, programming material, records and transcriptions and expenses for either remotely originating or recording for subsequent broadcast the live programs of beyond-studio origination listed in his program proposal. The petitioner, who has operated Station WHBT in Harriman for the past five years and is aware of current costs in the community in the above-mentioned categories, submits that the $42,000 budget provided by Crowder will be insufficient for the operation of the station as proposed.

31. As a first item in considering how unrealistic the specified amount is, the Commission is referred to the equipment financing plan relied upon by Crowder. The equipment cost of $17,394.10 is to be paid with a one-third down payment and the balance, $11,596.07, in thirty-six monthly installments. (Exhibit 3). Twelve monthly installments on the deferred balance plus interest on the unpaid portion at the most favorable rate would exceed $4,000.00. This would leave $38,000.00 or less of the $42,000.00 expense provision for all the other items mentioned above (power costs, programming material, etc.) and for salaries and salary expenses (FOAB, Workmen's Compensation, Unemployment taxes, etc.) for a staff of "at least seven persons", one of whom would be an engineer, even if Crowder would attempt to claim that his own salary or withdrawal of money from the enterprise was not intended to be included in the expense estimate. The production, programming, power and other operational expenses would not leave enough left of $38,000 for salaries and salary expenses. Not even the unemployment problems in the Harriman area have depressed wages to the extent that would be necessary for such minimum provision to suffice for seven employees, including a qualified engineer. The Commission could not accept Crowder's unrealistic proposal and it

must conclude that the station could not be operated in the manner proposed with the inadequate provision for operating expenses. The application, then, should be denied.

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C. Serious Questions Exist With Respect To Sufficiency Of Programming Proposal To Meet Needs Of The Community

32. The application as initially filed did not contain any specific representation concerning the steps taken, or not taken by Crowder to ascertain local needs and the ways in which he planned to meet such needs. However, by way of an amendment filed afterwards he submitted fifteen letters, addressed to himself from various writers in Harriman and elsewhere, as a response to Paragraph 10 of Section IV of the application, concerning "additional program data that the applicant desires to call to the Commission's attention". The amendment stated that such information, labelled Exhibit 6, consisted of "letters evidencing our efforts in surveying the community and its needs."

33. Of the fifteen letters, however, six are from out-of-state program sources simply answering a question concerning the availability of program material as, for example, British Broadcasting Corporation (BBC) taped programs, the National Education Association, Washington, D. C., which wrote that it "has not been able to provide stations with programming on a regular basis", and the series of recorded program material from the National Music Camp at Interlochen, Michigan. Two other letters concern-

ing program material were from Tennessee sources, the Farm Bureau Federation and the University of Tennessee. None of these letters suggested how Crowder had surveyed the community he proposed to serve or its needs, and in fact one negated any such survey for the writer informed Crowder that the program material he inquired about was being carried on the existing station. Apparently Crowder was placing reliance, then, on the remaining six letters, which were on letterheads of organizations and signed by persons in Harriman or Roane County to suggest that he had conducted a survey. It is in this connection that a serious question arises.

34. Since the letters were filed, three of them have been the subject of later letters to the Commission in which the writers explain the circumstances under which the first ones were obtained. One of these later communications is from a James Harmon, whose letter under date of October 26, 1961, on the letterhead of The Harriman Business Association, was filed by Crowder. Mr. Harmon's later communication to the Commission points out that although the October 26, 1961, letter was addressed to Crowder it was obtained from him by Mr. Scarborough, and further that the statements therein appearing were not those of The Harriman Business Association. The contents of Mr. Harmon's second communication, now in the Commission's files, raises serious questions as to the circumstances under which the first letter was obtained and whether the applicant filed it with the Commission to create by implication erroneous or misleading representations.

35. The other two letters which have been the subject of recent communications are from Mr. C. R. Black, on the letterhead of Harriman City Schools, and Mr. W. K. Warren, on the letterhead of the Roane County Chamber of Commerce. Mr. Black has now apprised the Commission that his first letter was not written under the authority of the City Board of Education, and that certain statements in the first letter may be subject of erroneous construction. Mr. Black recites how the first letter came into existence: "a gentleman who was interested in securing an additional radio station in the City of Harriman came by my office and asked that I rewrite and sign a letter which he had formed to be sent to Mr. F. L. Crowder, Harriman, Tennessee." The Warren letter is the subject of a communication dated December 2, 1962, from the present president of the Roane County Chamber of Commerce, Mr. Cooper. Mr. Cooper recites that investigation discloses that the first letter on Chamber letterhead was written without the consent and knowledge of the Board of Directors; that nothing appears in the organizations minutes, nor is a copy in the secretary's files. He states that the first letter was "not an official expression of the Board."

36. The foregoing developments indicate that the Commission cannot find the applicant to have taken sufficient or appropriate steps to ascertain local needs or that he has adequately planned to meet those needs. The Commission has stated, with affirmance by the U. S. Court of Appeals, that an applicant has the responsibility of ascertaining his

community's needs and of programming to meet them. Henry (Suburban Broadcasters) v. F.C.C., ___ F.2d ___ 23 R.R. 2016. The questions obtaining with respect to Crowder's activities preclude any finding that he has met the responsibility, but more, in light of the Commission's public announcements during the past two years that it was proposing to scrutinize applications against such requirement,[4/] there arises the further question as to whether Crowder attempted to hide or failed to disclose material matters in what the applicant submitted as a material representation.

D. The Trafficking Aspects Of The Proposal

37. F. L. Crowder, the applicant, has in the past owned and sold a Harriman station, when the sale provided a profit on the transaction. He also contracted to sell WDEH, Sweetwater, Tennessee, after operating the station for less than a year when a profitable sale could be arranged. His interest in Station WLIV, Livingston, Tennessee, in which he is a

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4/ See, for example, July 27, 1960, Report and Statement of Policy on Programming Inquiry (Public Notice 60-970): "we intend...to require a statement by the applicant, whether for new facilities, renewal or modification, as to: (1) the measures he has made to determine the tastes, needs and desires of his community or service area...." Notice of Proposed Rule Making, Docket No. 13961, released February 21, 1961: "State the scope and results of consultations with civic leaders, including but not limited to public officials, educators...(etc.) ... with respect to the needs of their groups."

partner, was on the market almost immediately after the station commenced operation, although a sale has not been made because of a lack of a buyer willing to pay the selling price for the part interest.

38. As the Commission's records reflect, the instant attempt is not the first time Crowder has been in the radio broadcasting picture in Harriman, Tennessee. He formerly owned WHBT, the existing Harriman station and sold the station (ex-costs and accounts receivable) to Folkways Broadcasting Company, Inc., in 1956 for $80,000.00, payable $10,000.00 down and $70,000.00 in monthly installments over eight years. (BAL-2321, granted June 13, 1956). The deferred balance was evidenced by a promissory note in principal amount $70,000.00, payable in 83 monthly installments of $835.00 and an 84th installment of $695.00, each with interest at the rate of 5% on the unpaid balance. The note was secured by a chattel mortgage on the personal property of the radio station and a deed of trust on the real property. The notes and instruments of security were made and given to F. L. Crowder and Tommie Crowder, his wife. The note has not been paid, and the chattel mortgage deed of trust have not been released. However, Crowder sold the note in May of 1961 to The First National Bank and Trust Company of Rockwood, Rockwood, Tennessee.

39. The referenced application, BAL-2321, lists Crowder's figures for the original cost, the then present value and the replacement cost of the tangible assets of WHBT which he sold to Folkways for $80,000.00.

Those figures, shown on Exhibit 1 of the assignment application, were:

Original Cost	$53,102.70
(Then) Present Value	$18,649.52
Replacement Cost	$47,995.20

Now Crowder is attempting to again acquire a radio station in Harriman, after having disposed of one in a profitable transaction and the petitioner submits that the Commission could not find the instant proposal to be in the public interest in view of that background fact. If Crowder's desire in the instant proposal is not related to a possible future sale and profit the Commission must wonder, as does Folkways, why he sold the Harriman station. Had he not sold he would not now be applying in the captioned case.

40. F. L. Crowder was granted a construction permit for Station WDEH, Sweetwater, Tennessee, on September 15, 1954, and the station commenced operation on program tests in February, 1955. Less than one year later, on January 18, 1956, Crowder entered into a contract to sell the property and equipment (not cash or accounts) of WDEH for $52,500.00, to Marto Broadcasting Co., Inc. (BAL-2240). The assignment application listed the cost and value of the tangible assets being sold for $52,500.00 at the following figures:

Original cost	$31,147.50
Present value	$29,985.10
Replacement cost	$36,852.20

(BAL-2240, Exhibit 1)

The Commission's files reflect that questions were raised about the transferee's qualifications, and on July 25, 1956, the assignment application was dismissed. However, a new assignment application was filed, BAL-2399, for consent to the sale of WDEH and assignment of the station's license to a new purchaser. The contract of sale was dated July 24, 1956, and the sale price was again $52,500.00. The same cost and value figures for the land and equipment, the assets being sold, were given as in BAL-2240. The assignor's balance sheet listed the total assets of Station WDEH as $38,769.71, of which $5,389.78 were cash and accounts receivable, not part of the sale transaction in which the sale price was $52,500.00.

41. F. L. Crowder and R. H. McCorn, a partnership d/b as Audio Broadcasters, are the licensees of Station WLIV, Livingston, Tennessee. The construction permit was granted on May 3, 1956, and on the basis of statements of third parties in the broadcasting business the petitioner believes and therefore avers that within not more than a year after WLIV commenced operation Crowder's interest in the station was listed for sale, and has been for sale since then, but the absence of a qualified buyer for a partial interest in a station in Livingston, Tennessee, has resulted in no sale having been made to date.

42. It is recognized that the first two above-mentioned transactions were approved by the Commission, and the third matter has not yet ripened into an application. Nevertheless, as the Commission pointed out in

Franklin Broadcasting Co., 22 R.R. 880, the fact that past transactions may not have been questioned does not preclude a question of trafficking in the light of such transactions from being raised subsequently. And see WFPG, Inc., 33 F.C.C. 673, 678, where the Commission adverted to the Franklin case and said:

> "It was pointed out that often trafficking can only be proved 'circumstantially'; that past transactions standing alone might not be sufficient evidence of trafficking, but that an entirely different picture could turn up when those past transactions are looked at along with transactions that occur later; and that often the Commission does not have before it the full facts concerning such past transactions (or even all of the past transactions) when the request is made to rule on the issue."

Here, it is submitted, the Commission could not grant the captioned proposal for another station by Crowder in Harriman without reconciling the aspects of trafficking in licenses which are raised by the instant applicant's earlier ownership and sale of a Harriman station, together with the other transactions mentioned above.

III. IF THE APPLICATION IS NOT DENIED, IT MUST BE DESIGNATED FOR HEARING ON THE FOLLOWING ISSUES

43. As the foregoing portion of this petition demonstrates, the Commission cannot find that a grant of the captioned proposal would serve the public interest, convenience or necessity. Because of the defects in the proposal and the deleterious effects a grant would have on the public, particularly in Harriman, Tennessee, the application

should be denied. If the application is not denied or dismissed, then it must be designated for hearing upon the following issues:

1. To determine whether there are adequate revenues to support more than one standard broadcast station in Harriman, Tennessee, without loss or degradation of standard broadcast service to Harriman and surrounding areas.

2. To determine whether the applicant is financially qualified to construct and operate the proposed station and whether its estimate of expected operating revenues and expenses is reasonable.

3. To determine whether F. L. Crowder in view of his proposals as to staff and operating expenses is qualified to operate its station in the manner proposed by his application.

4. To determine whether or not the applicant, F. L. Crowder, has made any efforts, and if so to what extent, to determine the tastes, needs and desires of Harriman, Tennessee, and the service area his proposed station would provide with technical service.

5. To determine whether the applicant has concealed or failed to disclose or attempted to misrepresent any material representation in connection with the statements in his application concerning his efforts to survey the community he proposes to serve and the community's needs.

6. To determine whether F. L. Crowder has been engaged in the trafficking of broadcast authorizations, and whether the captioned proposal for a station in Harriman, Tennessee, would create an opportunity for trafficking contrary to the purpose for which a broadcast authorization is granted.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the captioned application would serve the public interest, convenience and necessity.

44. The petitioner, licensee of Station WHBT, Harriman, Tennessee, should be made a party to the proceeding if a hearing is ordered. In

light of the matters comprehended by the issues barring a grant of the application, especially those concerning and involving the applicant's qualifications, the burden of proceeding with the introduction of evidence and the burden of proof under the issues should be placed upon the applicant, F. L. Crowder.

IV. CONCLUSION

45. The community of Harriman, Tennessee, and nearby area, does not have sufficient economic resources and capabilities to support more than the existing station. WHBT, the existing station, supplies the community and the listeners within its service area with well-rounded programming which meets the known and indicated needs and desires for radio time by both commercial advertisers and community groups and organizations. An additional existing station in Roane County, and other communication media both in the county and from locations outside the county, compete with WHBT and preclude any further commercial support from being available for another Harriman station.

46. The petitioner, who is a party in interest and entitled under the provisions of the Communications Act to object to the captioned proposal, has shown that the inability of the market to support more than one station properly would mean that the net result of a second assignment to Harriman would be a deprivation to the community of the quality of service it now receives. If two stations would be authorized neither would be able to obtain sufficient financial support to provide programming and other services to the meritorious degree now being supplied by WHBT. The competition between the second station and WHBT would not

achieve any public interest purpose, but on the contrary would give rise to public harm and prejudice.

47. On the basis of the captioned application, as amended, and the matters shown in this petition, the Commission could not find the applicant to be financially qualified. In addition, in the circumstances here present, there is the serious question of long term financial problems which would arise upon a licensing of a second station to Harriman. The Commission is unable to make the ultimate findings required by law that a grant of the application would serve the public interest, convenience and necessity. Further, the requisite findings could not be made in the face of the outstanding questions concerning the applicant's course of conduct in submitting and relying upon an exhibit, "evidencing our efforts in surveying the community and its needs", which gainsay and controvert a conclusion that such a survey was made. Finally, the question of trafficking in broadcast authorizations in the past and whether the instant application proceeds from a desire on the applicant's part to traffic in the requested permit contrary to the statute's intendment with respect to licenses for broadcast stations, all bar a grant of the application.

48. The petitioner submits that it is clear beyond a troubling doubt that the application must be denied. However, if it is not denied then the application must be designated for hearing upon the issues hereinabove specified, together with such further issues as the Commission may

include, and the burden of proceeding with the introduction of evidence and the burden of proof under all said issues must be placed upon the applicant. As a known party in interest, the petitioner should be named a party to such proceeding.

WHEREFORE, the premises considered, the petition requests that the Commission deny the above-styled application, or if the same be not denied, that it be designated for hearing on the issues listed herein and on such further issues as the Commission may specify, with the burden of proceeding with the introduction of evidence and the burden of proof with respect to such issues being placed upon the applicant, and that the petitioner be made a party to the proceeding. And, the petitioner prays for such other and further relief as may be required in the premises.

Respectfully submitted,

FOLKWAYS BROADCASTING COMPANY, INC.
(WHBT)

By:

MILLER & SCHROEDER
Its Attorneys

/s/ Arthur H. Schroeder
ARTHUR H. SCHROEDER

John B Kenkel
/s/ John B. Kenkel
JOHN B. KENKEL

218 Munsey Building
Washington 4, D. C.

December 10, 1962 *

* Date of filing

COUNTY OF ROANE)
) ss.
STATE OF TENNESSEE)

AFFIDAVIT

Edgar B. Willis, Jr., being duly sworn, upon his oath, deposes and says:

That he resides in Kingston, Tennessee, and was formerly employed at Radio Station WBNT, Oneida, Tennessee, where a Mr. Walter Scarborough was the manager; that on various occasions after October 4, 1961 he rode to work with Mr. Scarborough and the conversations between them on several such occasions turned to a discussion of an application for a new radio station in Harriman, Tennessee, which had been filed by Mr. F. L. Crowder; that on one particular occasion when the affiant and Mr. Scarborough discussed Crowder's application Mr. Scarborough stated that Mr. Crowder's plans with respect to the commercial rates for his proposed station was to have a rate that was fifty per cent (50%) of the rate of the existing station in Harrimen, WHBT, and that such rate would be established so as to get the commercial advertisers away from WHBT; that in said discussion Mr. Scarborough indicated that both he and Mr. Crowder understood that this would "drive WHBT out of business" which Mr. Crowder and Mr. Scarborough would be glad to have happen;

That thereafter, and unrelated to the foregoing conversations the affiant desired to change employment and on his own initiative applied for employment at WHBT, Harriman, Tennessee, which was closer to his home in Kingston; that the affiant was subsequently employed by and is now an employee of station WHBT; that the matters involved in the foregoing recited conversation with Mr. Scarborough were only recently related to the management of WHBT but were not, however, related in connection with any offer or promise of employment or offer or promise for continuance of employment; that the affiant makes this Affidavit voluntarily and under his own free will.

Further, the affiant sayeth nought.

Edgar B. Willis, Jr.
Edgar B. Willis, Jr.

Subscribed and sworn to before me this 8th day of December, 1962.

Notary Public

My Commission expires: May 16, 1966

COUNTY OF ROANE)
) ss.
STATE OF TENNESSEE)

AFFIDAVIT

KENNETH J. CROSTHWAIT, being duly sworn, upon his oath, deposes and says:

He is the president, director and majority stockholder of Folkways Broadcasting Company, Inc., a corporation, which is the owner and licensee of Radio Station WHBT, 1600 kc, 5 kw, daytime, Harriman, Tennessee, and he is now and since 1957 has been general manager of said Station WHBT.

He has read the foregoing Petition To Deny the application of F. L. Crowder, tr/as Harriman Broadcasting Co., which was prepared for and is being filed on behalf of Folkways Broadcasting Company, Inc.

The facts and matters stated in said Petition are true and correct to the best of his knowledge, information and belief. The affiant has direct and immediate knowledge of the facts and matters concerning WHBT and the radio business in Harriman and Roane County, Tennessee. He also has personal knowledge of the characteristics of said community, although for purposes of accuracy and completeness certain population figures and statistics were checked against published sources and said sources are given as the reference. With respect to those matters, and their respective source references, the affiant believes them to be true. Further, with respect to the other facts and matters set out in the Petition, the basis of the affiant's knowledge, or belief where so stated, is specified. In that connection, official notice is requested of matters appearing in the Commission's files.

As set forth in the Petition, the affiant is an experienced broadcaster. Based upon this experience in conjunction with his knowledge of

Harriman and Roane County, Tennessee, and of operating a radio station there, he is of the considered opinion that if a new station is authorized by the Commission to operate in Harriman, Roane County, Tennessee, the effect thereof would be to reduce WHBT's revenues, audiences and program sources. WHBT would then have to reduce or eliminate certain of the sustaining or public service programs set out in the Petition, and otherwise reduce the service now provided to its community. Finally, as specified in the Petition, the affiant is, for the reasons therein shown, of the considered opinion that a grant of the application of F. L. Crowder for a new station in Harriman, Tennessee would not be in the public interest but would in fact disserve and harm the public.

Kenneth J Crosthwait
KENNETH J. CROSTHWAIT

Subscribed and sworn to before me this 8th day of December, 1962.

Notary Public

My Commission expires May 16, 1966

CERTIFICATE OF SERVICE

I, Alice F. Hopper, hereby certify that I have this tenth day of December, 1962, sent by first class United States mail, postage prepaid, a copy of the foregoing "Petition to Deny" to the following:

Kenneth A. Cox, Esquire
Chief, Broadcast Bureau
Federal Communications Commission
Washington 25, D. C.

Norman E. Jorgensen, Esquire
2011 Eye Street, N. W.
Washington 6, D. C.
Attorney for F. L. Crowder

Alice F. Hopper
/s/ Alice F. Hopper
Alice F. Hopper

RECEIVED
DEC 11 [illegible]
CHIEF, HEARING DIVISION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

RECEIVED
DEC 10 1952
F. C. C.
OFFICE OF THE SECRETARY

In the Matter of 12-10-62 :
:
Freeman L. Crowder doing business as :
HARRIMAN BROADCASTING COMPANY : File No. BP-15,122
Harriman, Tennessee :

Orig. + 14

PETITION TO DENY

The First National Bank and Trust Company of Rockwood, a corporation having its principal office in Rockwood, Roane County, Tennessee, requests the Commission to deny the application of Freeman L. Crowder, doing business as Harriman Broadcasting Company, for a new station in Harriman, Roane County, Tennessee. The said bank requests that action for the following reasons:

1. The bank is the holder in due course of a certain note of Folkways Broadcasting Company, Inc., bearing date of June 20, 1956, payable to the order of Freeman L. Crowder and Tommie Crowder, his wife, secured by a Chattel Mortgage and a Deed of Trust of the same date, which instruments were made and given for and to secure the balance of the purchase price when Freeman L. Crowder sold Station WHBT, Harriman, Tennessee, to Folkways Broadcasting Company, Inc.

2. Mr. Crowder, the former owner of WHBT, is the applicant for the new station. If the instant application is not denied and Mr. Crowder again operates a radio station in Harriman, he will compete with Station

WHBT. The value of the note which the bank purchased from Crowder will be adversely affected and the bank's security will similarly be deleteriously affected. When Mr. Crowder sold the note to the bank, on May 2, 1961, he did not indicate that he was planning to file for another radio station in Harriman. Had he done so the bank would not have purchased from him the above-referenced note at that time and for the consideration it did pay, because of the questions which would have presented themselves, namely, the question of Mr. Crowder competing with an existing station on which he retained a lien and the question of the value of the note and the security (land and personal property of Station WHBT) with a second station in Harriman.

3. The First National Bank and Trust Company of Rockwood is intimately acquainted with the economic and business situation in Roane County from long experience in dealing with all facets of the community, and said Bank believes that if the Commission assigned another radio station to Harriman, Roane County, it would create economic problems for the two existing stations, and particularly Rockwood's station, WRKH, in that the limited advertising revenues available to communication media in Roane County would not be sufficient, in the bank's view, to support the additional station except at the expense of the existing station.

4. There are two radio stations in Roane County, WRKH, Rockwood, and WHBT, Harriman, and three newspapers, which are involved in a constant and determined competitive contest for available advertising dollars.

The addition of another radio station in the county would create a burden for small advertisers, such as the bank. The additional station would be expected to reach some of the listeners presently reached by the existing stations, and in order to continue to reach those listeners, the bank, and other small advertisers, would find itself in a position of having to expend additional money. This would necessitate a decision, especially where the additional money may not be available, to forfeit the opportunity to reach some listeners or to withdraw all advertising from radio.

5. The addition of another radio station in Roane County would require a lessening of the advertising purchased from the two existing stations. Even if the bank decided to continue to use radio advertising it would, in order to reach the radio audience, have to use three stations instead of two, and thus less money would be spent with the two existing stations.

6. It is the opinion of the bank that the two existing stations more than adequately serve Roane County and that there is no need for a third station. Approximately seven years ago, interests from McMinnville, Tennessee, obtained a license for a station at Rockwood, now known as WRKH. The station was subsequently sold twice, each operator finding it difficult to operate profitably. It is the bank's understanding that the existing operator is experiencing difficulties and if WRKH loses a substantial portion of its advertising revenues by reason of a new station in Roane County, it does not appear realistic to expect WRKH to remain on the air.

7. For the foregoing reasons, the First National Bank and Trust Company of Rockwood requests that the Commission not assign a third radio station to Roane County, Tennessee, and that the application of Freeman L. Crowder be denied.

Respectfully submitted,

FIRST NATIONAL BANK AND TRUST
COMPANY OF ROCKWOOD

By: Harry T. Burn
Harry T. Burn
President

STATE OF TENNESSEE :
: ss
COUNTY OF ROANE :

Harry T. Burn, being first duly sworn, deposes and says:

That he is the President of the First National Bank and Trust Company of Rockwood, a corporation organized and existing under and by virtue of the laws of the State of Tennessee, and in whose behalf he makes this affidavit;

That the foregoing Petition to Deny the application of Freeman L. Crowder for a new station at Harriman, Roane, County, Tennessee, has been prepared on behalf of said bank, under the direction of the affiant, and that the views and matters therein set forth are true and correct to the best of the affiant's knowledge and belief.

Harry T. Burn
Harry T. Burn

Subscribed and sworn to before me, the undersigned officer, this 7th day of December, 1962.

Lueda M. Hinds
Notary Public

My Commission expires July 17, 1965.

CERTIFICATE OF SERVICE

I, Harry T. Burn, certify that on this 10th day of December, 1962, I have caused to be ~~I~~ mailed, by United States mail, first class, postage prepaid, a copy of the aforegoing Petition to Deny and Affidavit thereon, to the following, who is counsel of record with the Federal Communications Commission for Freeman L. Crowder, d/b as Harriman Broadcasting Company:

Norman E. Jorgensen, Esquire
Krieger & Jorgensen
2011 Eye Street, N. W.
Washington 6, D. C.

Harry T. Burn
Harry T. Burn

SMITH & PEPPER
ATTORNEYS AT LAW
PERPETUAL BUILDING
1111 E STREET, N. W.
WASHINGTON 4, D. C.

TELEPHONE
EXECUTIVE 3-7030

E. STRATFORD SMITH
VINCENT A. PEPPER
JOHN P. COLE, JR.
THOMAS G. SHACK, JR.
THOMAS W. FLETCHER
ROBERT E. CONN
KEITH E. PUTBRESE
ROBERT F. CORAZZINI
ROBERT W. HEALY

January 8, 1963

RECEIVED
JAN 8 1963
F.C.C.
OFFICE OF THE SECRETARY

RECEIVED
JAN 8 1963
CHIEF, HEARING DIVISION

Mr. Ben F. Waple, Acting Secretary
Federal Communications Commission
Washington 25, D. C.

Re: File No. BP-15122

Dear Mr. Waple:

Transmitted herewith on behalf of F.L. Crowder, tr/as Harriman Broadcasting Co., is an original and nineteen (19) copies of its "Opposition to Petition to Deny Filed by Folkways Broadcasting Company, Inc." with respect to the above-referenced application.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

Robert F. Corazzini
Robert F. Corazzini

Enclosures (20)

ORIGINAL

RECEIVED
JAN 8 1963
F.C.C.
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

In Re Application of)
1-8-63)
F. L. CROWDER, tr/as)
Harriman Broadcasting Co.,) File No.
Harriman, Tennessee) BP-15122 ✓
)
For Construction Permit Orig + 19)

OPPOSITION TO PETITION TO DENY FILED BY FOLKWAYS BROADCASTING COMPANY, INC.

Comes now F. L. Crowder, tr/as Harriman Broadcasting Co., applicant for a new standard broadcast station at Harriman, Tennessee, by its attorneys, and respectfully submits its Opposition to Petition to Deny the above-captioned application, filed with the Commission on December 10, 1962 by Folkways Broadcasting Company, Inc. In support thereof, F. L. Crowder states as follows:

I. PRELIMINARY STATEMENT

1. The above-captioned application of F. L. Crowder (hereinafter sometimes referred to as Crowder, or applicant) for a construction permit for a new standard broadcast station at Harriman, Tennessee, to operate on 970 kc with 500 w power, daytime only, was filed on October 4, 1961. The application was amended on November 13, 1961, indicating the street address of the proposed transmitter location and by an exhibit consisting of certain letters which evidenced the applicant's effort in surveying the community and its needs. On December 10, 1962, Folkways Broadcasting Company, Inc., (hereinafter sometimes referred to as Folkways) filed a petition to deny the above-captioned application.

II. THE PETITION ALLEGES NO FACTS WARRANTING A DENIAL OF THE APPLICATION

2. Folkways Broadcasting Company, Inc., is the licensee of Radio Station WHBT in Harriman, Tennessee. Folkways requests that the Crowder application be denied or in the alternative be designated for hearing.

3. The main thrust of Folkways' petition is that a new station in Harriman would contravene the public interest because it would destroy or reduce the available service. This is based upon the allegation of the inability of the community to support another station. Folkways states that the 1960 population of Harriman of 5,931 represented a decrease in population over the 1950 population of 6,389. Folkways attributes this decline to its undocumented statement that high school graduates and younger families are moving out of the community to find employment. The figures quoted by Folkways would lead one to believe that Harriman is a small regressive community. However, the fact is that Harriman is a progressive community which has shown a steady growth in full-time non-transient residents. A comparison of the 1950 and 1960 population figures is quite misleading. While there has been a steady growth in population, the 1950 figures reflected a large influx of temporary residents due to the construction of the Oak Ridge atomic energy plant. Further, the trend toward suburban living has also affected Harriman. Most of the new homes built during the past ten years were built outside the city limits of Harriman. In fact the Tennessee Planning Commission has certified that Harriman's new 1961 population is 6,104. This figure reflects the annexation by the city of a small suburban area near Harriman (See Attachment No. 1).

4. However, Folkways omitted the most pertinent and informative facts concerning the population and size of the city of Harriman. The city of Harriman has recently annexed the suburban area which surrounds Harriman. The annexation will become effective on January 15, 1963. (See Attachment No. 2). Therefore, as of that date the city of Harriman will be nearly twice as large, area wise, as it is presently. (See Attachment No. 3). Furthermore, and of utmost importance, when the annexation becomes effective on January 15, 1963, the new population of the city of Harriman will be between 11,000 and 12,000. (See Attachment No. 4). Therefore, these facts which Folkways failed to include in its petition, present a drastically different and exceedingly more enlightening picture of the true status of Harriman as it exists today.

5. Folkways alleges that the area's economic problems commenced with the decline of the coal industry. Speaking in sweeping generalities this statement contains an element of truth. However, it is again misleading in that the coal industry has not been significant in Roane County since the 1930's. The impact of the decline of the coal mining industry is a thing of the past in that the area's economy has readjusted and is now geared to other industries.

6. Folkways alleges that WHBT has suffered a gross loss during the time it has operated the station. Folkways attributes such a condition to the "economic plight" of Roane County. Folkways labels the area a "depressed area" and would have one believe that the existing stations have completely saturated the advertising revenues. Folkways attempts to show that the area could not conceivably generate any new or increased advertising revenues and as a result could not financially support another station. However, as in the

case of WRKH, Rockwood, Tennessee, a factual,accurate analysis of the area, which the applicant has set forth below, indicates that it is not the financial condition of the county which causes an unprofitable radio station operation therein. These facts show that Roane County is a progressive and rapidly growing area. Further the facts conclusively show that the area is finanically sound and has a strong well-balanced and growing economy. These facts indicate that any well-managed radio station run by personnel employing sound business practices would find more than ample financial support in the area. The facts will also indicate that an additional station with a sound business operation would also find its operation in Roane County profitable. Although convenient it may be to place the blame elsewhere, a radio station complaining of an unprofitable operation in this area cannot validly accuse the economy of the area for its uneconomical operation.

7. Roane County is one of Tennessee's fastest growing counties. Roane County's population increased from 31,665 to 39,133 between 1950 and 1960 - a numerical increase of 7,468 and a percentage increase of 23.6%.

This makes Roane County the eighth fastest-growing county numerically among the 95 counties of Tennessee, including the metropolitan counties of Shelby (Memphis), Davidson (Nashville), Hamilton (Chattanooga) and Knox (Knoxville). Its percentage of growth in the 1950 - 60 decade was exceeded by only 6 other counties[1/]. The following information was obtained from a publication of the Area Development Committee of Roane County, Tennessee, entitled Roane

County Overall Economic Development Program.

8. Present economic conditions: 71% of the county's land area is in farms producing a variety of crops. Livestock and dairy products also contribute materially to farm income. Gross farm cash income for the year 1960 was estimated at $1,907,000.00. Manufacturing establishments in the county number approximately 18. One of the nation's newest and most modern ferro-alloy electric furnace plants was placed in operation in Roane County in 1957 by the Tennessee Products and Chemical Corporation at a cost in excess of $10,000,000.00. The world's largest steam-powered electric generating plant consisting of 9 large turbines, known as Kingston Steam Plant, was completed by the T.V.A. in 1955 at an approximate cost of $298,000,000.00. These and other various operations in the county employ approximately 5,000 people with annual payrolls in excess of $17,475,000.00. These figures do not include the Atomic Energy Commission plant at Oak Ridge. Deposits of the three commercial banks in the county, including the branches, and the one Federal Savings and Loan Association as of December 31, 1960 amounted to $23,295,410.00. Between 1950 and 1958 the estimated total personal income for Roane County jumped from $25,243,000.00 to $47,864,000.00. The estimated total wage and salary disbursements by industrial source during the same period showed that wages and slaries were approximately doubled between 1950 and 1958 in every catagory but three. Estimated total wages and salaries increased approximately 100% between 1950 and 1958 in the following catagories:

1/ Publication of the Rockwood Industrial Development Commission (1961).

manufacturing; wholesale and retail trade; finance - insurance, real estate; communications - public utilities; services; Federal Government and state and local government. There was a drop of approximately 40% in contract construction, a drop in farming - mining, etc., of approximately .05% and an increase in transporation of 18%. The total estimated wage and salary disbursements by industrial source was $16,518,000.00 in 1950 and increased to $35,429,000.00 in 1958, or a better than 100% increase.

9. While Folkways cites the unemployment of the county and terms it a "depressed area" citing the same source from which the material above was taken, Folkways neglects to include the statement of the Area Development Committee of Roane County that there is a definite question of whether there was an economic decline causing unemployment or whether the county grew so fast that industry could not keep pace with the increase in population and furnish a sufficient number of jobs: or the further statement that, "In the past few years Roane County has made excellent progress in economic and social development. The county leaders plan to further the development of the county". When one considers all of the factors as set forth above it is clear that Roane County, rather than being a "depressed area" or a area of chronic unemployment, is a county which is basically economically stable but which has grown and progressed a little too rapidly even for its own good. The following quotation taken from that same publication concerns the progress and potential of the city of Harriman:

> "The newly annexed areas which will be added to and become a part of the city of Harriman on January 15, 1963, will anproximately triple the area of the city of Harriman. Studies are already underway looking toward an extension of city services to

> these areas and the plan of the city is to extend sewer lines and water, including adequate fire protection, street construction and improvements and street lighting to these areas as soon as can be accomplished. The extension of these services to these newly annexed areas will open up numerous highly desirable industrial sites as well as making available for development many more residential areas. Limited fire and police protection and garbage collections will be avilable but the goal of the city of Harriman is to extend all of these services, as well as those listed above, to all of the newly annexed areas as expeditiously as same can be accomplished in order that development of these areas will be in nowise hampered due to lack of city facilities and services." (Page 58).

10. The most important factor concerning the economy of Roane County is that presently it is on the upswing and considering its potential, the outlook for the economic growth of the county is exceedingly good. Thus while Folkways petition insinuates that the county stands little or no chance for economic improvement, the fact is that at the present time the economy of Roane County is making rapid strides ahead and all available facts point to a long term continuation of this trend. A report issued by Sales Management in the summer of 1962 indicated that Roane County stood out nationwide, as a strong market, with a buying power that is better than average. The report showed that income in Roane County was high in 1961. After payment of personal taxes there was left a net of $52,717,000.00. (See Attachment No. 5).

11. As further evidence of the fact that, contrary to the allegations of Folkways, the people of Roane County are not out-migrating to other areas, is the fact that the residents of Roane County have a huge amount of money invested in their homes. Their equity in these dwellings comes to $3,330,000.00. Further, there are mortgages on only 55% of the non-farm dwellings in the region encompassing Harriman. (See Attachment No. 6). During the first half

of 1961 deposits in Roane County Banks were up $1,018,026.62 and loans were also up $413,045.42, over the last half of 1960. This is part of a general increase in bank deposits and loans over the last five years in the county. This trend has been taking place in all of Roane County's banks. Among the reasons given for such a rise were: (1) more people moving into the area; (2) an increase in employment cuased by a number of construction projects in the county; (3) a general increase in business. (See Attachment No. 7). As a further evidence of the growing economy of Roane County pension benefits have increased greatly over the last three years. (See Attachment No. 8).

12. Therefore, Folkways allegations that Roane County is a depressed area with little chance for improvement and its conclusions that the two existing stations in Roane County has exhausted the avilable revenues and that three stations simply could not survive, cannot be supported in the face of the above facts. It is clear that the financial situation and the economy of Roane County in general is more than strong enough to support three radio broadcast stations. The fact that the station in Harriman licensed to Folkways has suffered a consistent loss over the past five years can only be attributed to the business management of the station, in light of the rapid growth and economic improvement of the county over these same five years. Further, the estimate by Mr. Kenneth J. Crosthwait, president and majority stockholder of Folkways that the maximum potential revenue for Roane County radio stations is $125,000.00 per year and that the entry of a new station to the market would leave only $25,000.00 in available revenue for the Rockwood station and the new station, is so obviously inaccurate and unsubstantiated in light

of the facts above recited, that the only conclusion must be that Mr. Crosthwait simply has no conception of the economic condition and potential of Roane County.

13. It is therefore clear that the unprofitable operation of WHBT is due, not to the inability of Roane County to support a radio station or to support more than the existing number of radio stations, but must be due to the internal operations of the existing stations. While Folkways claims a gross loss over the last five years, no where is it indicated how much of a salary the president and majority stockholder of Folkways, Kenneth J. Crosthwait, draws from the operation of the station or if any of his family is on the payroll . An unprofitable business operation can be attributed to many factors. It therefore logically follows that Folkways' allegation that applicant's new station would have such an economic impact upon WHBT so as to result in the diminution or destruction of present service, must also fall of its own weight.

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If there is any diminution or destruction of WHBT's service it would have to result from the operation of WHBT rather than the ability of the county to support another radio station, since it has been clearly shown that the county is more than financially capable of supporting three radio stations profitably, if all three radio stations are well managed and run in a business-like manner.

14. Folkways also alleges through an affidavit of Mr. Edgar B. Willis, Jr., that a Mr. Scarbrough had stated that Crowder planned to establish a rate for advertising 50% below that charged by WHBT, and that Crowder aimed to drive WHBT out of business by a rate war utilizing cut-rate advertising practices. Attached hereto as Attachment No. 9 is the sworn statement of

Mr. Walter H. Scarbrough which indicates that Mr. Willis' statement is not in accord with the actual facts and that the alleged statements by Scarbrough to Willis concerning Crowder's so-called rate war are in fact without a basis in truth. However, disregarding this fact, the cry of "rate war" by Folkways merely goes to prove once again that is is not the inability of the county to support a radio station but it is instead the operation of WHBT itself which results in the fact that it is an unprofitable business. Attached also hereto is Attachment No. 10 which contains the present rate card of WHBT and the present rate card of Radio Station WLIV, Livingston, Tennessee in which the applicant Crowder, has a partnership interest. This (WLIV) rate card is the rate card which Crowder intends to use for the new Harriman station. Parenthetically, it is the same rate card used by Crowder while operating WHBT in Harriman when Crowder was the owner and licensee. The station was at that time operated at a substantial profit. A comparison of these rates will show in fact that the WHBT rate under Folkways management has been doubled from the rates of WHBT under Crowder's management and are twice as expensive as the rates of the existing WLIV in Livingston, Tennessee. The rate cards are merely proof of sound economical management versus poor uneconomical management. Folkways cannot use the allegation that the county cannot support another

radio station to cover up the fact that it has priced itself out of the market.

15. It is evident from the sworn statement of Mr. Scarbrough that there are many accounts in the Harriman area that are not presently being serviced by WHBT but that if a reasonable rate were charged that many of these accounts would be available. Certainly if Folkways is interested only in a get-rich-

quick program by serving only the large advertising accounts in the area then they must pay the price of forgoing the abundant smaller accounts which are available. As indicated by Mr. Scarbrough's statement, there are many businessmen in the Harriman area more than willing to advertise over a Harriman radio station that does not charge exorbitant rates. Actually, in light of these facts it is not surprising that the present WHBT operation is losing money in an area which previously supported a full-time WHBT operation at a profit. Therefore, all of the allegations of Folkways concerning the loss of the public in program service as a result of its trumped-up "rate war" are completely without substance. Concommittantly the allegations that the Crowder application must be denied because it would have an adverse effect on the public interest are also without substance.

16. Folkways also alleges that the estimate by Crowder that he will obtain revenues in the amount of $50,000.00 for the first year of operation is unrealistic. This allegation is based upon the "studies" and the "opinion" of Folkways' president and general manager. The worth and value of Mr. Crosthwait's studies and opinions have been dealt with previously in this opposition. It is therefore evident from the material in the preceding portions of this opposition that not only is the $50,000.00 figure realistic but also that it is conservative. There is no question as to Crowder's ability to construct the station and to operate it initially without revenues. Further when the true facts concerning the economic condition and financial ability of Roane County are analysed it is abundantly clear that a third station could be supported in the county.

17. In its continual groping to find some reason to present to the Commission why the application should be denied, Folkways then alleges that Crowder's proposed expense budget of $42,000.00 is inadequate and that the station could not operate on such a budget. Attached hereto as Attachment No. 11 is a detailed breakdown of the proposed annual operating expenses for the applicant's proposed station. As further proof that a well-managed station could operate in Harriman on a budget of $42,000.00 there is submitted herewith as Attachment No. 12 the statement of income and expense for Radio Station WHBT, Harriman, Tennessee for 1955. At this time Radio Station WHBT was owned and operated by the present applicant, F. L. Crowder. This statement shows that the cost of operation for Station WHBT in 1955 amounted to $52,031.75. It must be born in mind that this was the operating expense for a full-time radio station in Harriman. Therefore it is evident that a proposed operating budget of $42,000.00 for a daytime only station in Harriman is more than realistic. It merely goes to point out the fact that a well-managed and well-run operation will adequately serve the public interest and can, at the same time, be a profitable operation. The fact that Folkways annual operating expenses for WHBT are between $85,000.00 and $90,000.00 a year certainly cannot be attributed to the fact as pictured by Folkways that Roane County is a "depressed area". In this connection Attachment No. 13 is the profit and loss statement for Radio Station WHBT, Harriman, Tennessee for 1955 while under the ownership and operation of F. L. Crowder. This attachment indicates that the station had a net profit of 18,090.71 dollars for the year 1955. Thus, whether a station in Harriman can be operated profitably if well-man-

aged is not open to conjecture but instead, is a fact of reality based upon past such operations.

18. Folkways also questions the sufficiency of the programming proposal to meet the needs of the community. Again, this represents another vain attempt by Folkways in its desperate probing to present a valid reason to the Commission for its Petition to Deny. Mr. F. L. Crowder for many years operated a radio station in Harriman, Tennessee. He was, and is, thoroughly familiar with the programming needs and desires of the people of that area. He is today a business man in this very area. The programming proposals were based in large measure upon Mr. Crowder's personal and every-day knowledge as a broadcast businessman, of the area and people which he intends to serve, as well as his intimate personal contact with these people at the present time. Mr. Crowder is thus perhaps as well aware as anyone of the present needs of the community and its surrounding area. The allegations concerning the letters are typical of the Folkways pleading in that by innuendo they cast aspersions upon the applicant. None of the letters submitted were submitted as representing the opinion of a group or organization but only as representative of the signatory's opinion. Nowhere in the application is there any statement or implication to the contrary. The contacts made by Mr. Scarbrough were made in such a manner that the contacted parties were completely and fully apprised of the facts. Submitted herewith as Attachment No. 14 is the sworn statement of Mr. Walter H. Scarbrough which completely and fully sets forth the manner in which these contacts were made in which the letters were obtained. It is therefore clear that Crowder, through his ex-

perience and contacts and intimate personal knowledge of this area, has more than adeuately ascertained the local needs of the people. Further Crowder's programming proposal based upon his knowledge of the local needs also adequately meets these needs.

19. To proceed from the ridiculous to the sublime, Folkways then accuses the applicant of "trafficking in licenses". To give credit where credit is due this is probably the most novel trafficking issue ever presented to the Commission. As the basis for the accusation that F. L. Crowder has been quilty of trafficking in licenses Folkways points out that Crowder has owned and sold two radio stations. On this basis, when the WHBT license comes up for renewal, pursuant to Folkways conception of the Federal Communications Commission regulations, it should be designated for hearing upon a trafficking issue designated against Kenneth J. Crosthwait in as much as he too has owned and sold two radio stations. Mr. Crosthwait was the owner of WTCW, Whitesburg, Kentucky, and WIOD, Sanford, Florida. WTCW was sold in 1956 and WIOD was sold in 1957. Folkways then makes the allegation that Crowder attempted to sell his interest in Radio Station WLIV soon after it was constructed and operating. This allegation is based upon alleged statements of third parties (conveniently unnamed) made to Crosthwait.

20. The true facts, which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his radio interests due to ill health. Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry. However, Mr. Crowder is now enjoying better health and confident of his ability to serve the public,

desires to re-enter the broadcast industry in Roane County. To put the icing on the cake Folkways then attempts to have the Commission believe that the instant application of Mr. Crowder is solely for the purpose of a possible future sale at a profit. This bit of tongue-in-cheek legal manuvering is interesting indeed when one considers the fact that Folkways has previously spent 20 pages in the very same petition in an attempt to convince the Commission that a new radio station in Harriman would be a colossal financial failure and would probably be bankrupt within a year. The allegation of a possible future profitable sale of the new Harriman station of course contradicts all previous allegations by Folkways that the area could not economically support a third radio station. It is clear therefore that a charge of trafficking against Crowder is wholly unwarranted and without substance.

THEREFORE, it is respectfully submitted that the Folkways petition does not establish or allege any facts which raise a question of whether the community of Harriman, Tennessee and the nearby area have sufficient economic resources and capabilities to support an additional radio station. Further, as shown in this pleading any degradation of the service of WHBT would be a result of its own operation and not the result of an additional station in the area. Further it has been shown that the applicant's financial qualifications are not open to any doubt. Also it has been shown that the applicant, due to his past and present personal and business association with the area is well aware of the community's needs. Based upon this, the applicant's programming proposals more than adequately serve the needs of the community. Finally it has been shown, that the allegations of trafficking against Crowder are entirely without merit.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully submitted that the Commission should deny the Petition to Deny filed by Folkways Broadcasting Company, Inc., and grant the application of F. L. Crowder for a construction permit for a new radio broadcast station to be located in Harriman, Tennessee.

III. THE COMMISSION IS WITHOUT AUTHORITY TO DESIGNATE THE CROWDER APPLICATION FOR HEARING

21. In the alternative Folkways requests that if the application is not denied or dismissed, then it should be designated for hearing upon the following issues:

> "1. To determine whether there are adequate revenues to support more than one standard broadcast station in Harriman, Tennessee, without loss or degradation of standard broadcast service to Harriman and surrounding areas.
>
> "2. To determine whether the applicant is financially qualified to construct and operate the proposed station and whether its estimate of expected operating revenues and expenses is reasonable.
>
> "3. To determine whether F. L. Crowder in view of his proposals as to staff and operating expenses is qualified to operate its station in the manner proposed by his application.

> "4. To determine whether or not the applicant, F. L. Crowder, has made any efforts, and if so to what extent, to determine the tastes, needs and desires of Harriman, Tennessee, and the service area his proposed station would provide with technical service.
>
> "5. To determine whether the applicant has concealed or failed to disclose or attempted to misrepresent any material representation in connection with the statements in his application concerning his efforts to survey the community he proposes to serve and the community's needs.

> "6. To determine whether F. L. Crowder has been engaged in the trafficking of broadcast authorizations, and whether the captioned proposal for a station in Harriman, Tennessee, would create an opportunity for trafficking contrary to the purpose for which a broadcast authorization is granted.
>
> "7. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the captioned application would serve the public interest, convenience and necessity."

22. In the preceding portion of this pleading, it has been shown beyond a doubt that there is no possible question which could give rise to the proposed issues of Folkways. The applicant has proved himself to be financially qualified and has demonstrated his ability to operate the station in the manner proposed. The applicant has demonstrated that his program proposals were based on adequate determination of the tastes,needs and desires of the area and that there has been no misrepresentation or failure to disclose in this connection. Additionally, the facts of record negate any question of trafficking. Finally, it has been shown that Harriman, and Roane County, Tennessee, possess more than adequate revenues to support an additional standard broadcast station.

23. In actuality the petition by Folkways is based upon its allegation that there are insufficient revenues to support an additional station in Harriman and Roane County, Tennessee. The other allegations and proposed issues must fall of their own weight and are without merit. Since Folkways has not alleged any facts under which the Commission could designate the Crowder application

for hearing on its proposed issues 2 through 6, Folkways, in fact, is simply asking the Commission to designate the application for hearing to make a determination as to whether there are adequate revenues to support more than one broadcast station in Harriman, Tennessee, or an additional station in Roane County, Tennessee. In this regard it is respectfully submitted that the Commission is without authority to designate an application for hearing upon such an issue , for the following reasons:

24. It is respectfully submitted that the Federal Communications Commission does not have the authority to deny an application for a new standard radio broadcast station based solely upon what the Commission feels will be the effects of legal competition upon the public service of the radio broadcast stations involved, in any given area. The question whether the Commission could deny an application for a standard broadcast station merely on the basis of the economic impact and the effect of the competition resulting from the grant of such application, received its first thorough consideration in the case of Federal Communications Commission v. Sanders Brothers Radio Station.[2] This was a case before the United States Supreme Court upon the following facts: a newspaper publishing company in Dubuque, Iowa, filed with the Commission an application for a construction permit to erect a broadcast station in that city. The respondent, who had for some years held a broadcast license for, and had operated, Station WKBB in East Dubuque, Illinois, a city directly across the Mississippi River from Dubuque, Iowa, applied to move its station to Dubuque, Iowa. Simultaneously, the respondent opposed the application of the newspaper alleging that there was an insufficiency of advertising revenue to support an additional station in Dubuque and that there was no need for any additional radio outlet in Dubuque. The Commission issued an order granting

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[2] 309 U.S. 470 (1940).

both applications. The respondent appealed to the Court of Appeals for the District of Columbia Circuit and that Court held that one of the issues which the Commission should have tried was that of alleged economic injury to the respondent's station by the establishment of an additional station.

25. The Commission contended that under the Communications Act economic injury to a competitor is not a ground for refusing a broadcast license and therefore the respondent was not a person aggrieved, or whose interests were adversely affected by the Commission's action within the meaning of §402(b) of the Act which authorizes appeals from the Commission's Orders. The Supreme Court reversed the Court of Appeals holding that ". . . resulting economic injury to a rival station is not, in and of itself, and apart from considerations of public convenience, interest or necessity, an element the petitioner must weigh, and as to which it must make findings in passing on an application for a broadcasting license." [3] The Court also spoke in the following language of the general nature of the radio broadcasting industry:

> "In contradistinction to communication by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission, the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus the Act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of

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[3] Id. at 473.

rates and charges, and other measures which are unnecessary if free competition is to be permitted.

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"But the Act does not assay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management or of policy. In short, the broadcasting field is open to anyone, provided

there be an available frequency over which he can broadcast without interference to others, if he shows competency the adequacy of his equipment, and financial ability to make good use of the assigned channel.

* * * * * *

"Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public. Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who is not interferring electrically with other broadcasters to survive or succumb according to his ability to make his programs attractive to the public.

"This is not to say that the question of competition between a proposed station and one operating under an existing license is to be entirely desregarded by the Commission, and, indeed, the Commission's practice shows that it does not disregard that question. It may have a vital and important bearing upon the ability of the Applicant adequately to serve his public; it may indicate that both stations - the existing and the proposed - will go under with the result that a portion of the listening public will be left without adequate service; it may indicate that, by a division of the field both stations will be compelled to render inadequate service. These matters, however, are distinct from the consideration, that, if a license be granted, competition between the licensee and any other existing station may cause economic loss to the latter. If such economic loss were a valid reason for refusing a license, this would mean that the Commission's function is to grant a monopoly in the field of broadcasting, a result which the Act itself expressly negatives, which Congress would not have contemplated without granting the Commission powers of control over the rates, programs and other activities of the business of broadcasting." 4/

26. Following the decision in Sanders the Commission's policy in acting upon applications for radio broadcasting facilities was that, as a matter of policy, it should not, 5/ and as a matter of law, it could not, 6/consider the effects of legal competition upon the public service in the field of broadcasting.

27. In 1958, however, the Court of Appeals for the District of Columbia Circuit reversed the position of the Commission in Carroll Broadcasting Company v. Federal Communications Commission. 7/ Carroll involved a situation where the Commission had refused to consider the alleged effects of competition by a prospective station as a factor of the public interest, on the grounds that Congress had determined that free competition should prevail in the broadcast industry, and in the light of other decisions made by it, as a matter of policy that the possible effects of competition will be disregarded in passing upon applications for new broadcast stations. The Commission also argued to the Court in Carroll, that if it had authority to consider economic injury as a factor in the public interest the whole basic concept of a competitive broadcast industry disappears. The Court specifically disagreed. The Court stated:

> ". . . if the situation in a given area is such that available revenue will not support good service in more than one station, the public interest may be in the licensing of one rather than two stations. To license two stations where there is revenue for only one may result in no good service at all. So economic

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4/ Id. at 474 - 76.
5/ Voice of Cullman 14 FCC 770 (1950).
6/ Southeastern Enterprises, Inc., 22 FCC 605 (1957).

7/ 258 F. 3d 440 (D.C. Cir. 1958).

> injury to an existing station, while not in and of itself a matter of that moment, becomes important when on the facts it spells dimunition or destruction of service. At that point the element of injury ceases to be a matter of purely private concern." 8/

28. The Court held that, "when an existing licensee offers to prove that the economic effect of another station would be detrimental to the public interest, the Commission should afford an opportunity for presentation of such proof and, if the evidence is substantial (i.e., if the protestant does not fail entirely to meet his burden), should make a finding or findings." 9/ The Court went on to say, "Private economic injury is by no means always, or even usually, reflected in public detriment. Competitors may severely injure each other to the great benefit of the public. The broadcast industry is a competitive one, but competitive effects may under some sets of circumstances, produce detriment to the public interest. When that happens the public interest controls." 10/

8/ Id. at 443.
9/ Id. at 443.
10/ Id. at 443.

29. Therefore, as the Commission's position in Carroll indicates, following Sanders it was generally felt that the law was that the Commission could not consider "economic injury" to an existing station in passing upon an application for a new station and consistently refused to do so except to accord status in its proceedings as a party aggrieved or a party in interest to persons alleging "economic injury" under such circumstances.

30. The ambiguity in Carroll is emphasized by the fact that the Court reiterated the philospphy that the field of broadcasting is a competitive one. Actually, what the Court appears to have done was to consider broadcasting as a field of restricted competition as distinguished from free competition by

introducting the "public utility" concept of controlled competition into the field of broadcasting. Thus, it is clear that the Carroll decision was based upon an erroneous conception by the Court of the nature of the broadcast industry under the Communications Act. A mere reading of the decision points out the Court's conception of broadcasting as a field of restricted or limited competition. However, the very next year the Court itself clearly indicated that its decision in Carroll was based upon the public utility concept of Federal regulation.

31. One year after the United States Court of Appeals for the District of Columbia Circuit handed down its decision in Carroll, the Court decided the case of Delta Airlines, Inc. v. Civil Aeronautics Board. 11/ In Delta, a case concerning awards of new routes made by the Civil Aeronautics Board, the Court made the following statement:

> "Another general doctrine based upon economic considerations is pertinent to the present case. In many fields, including both communications and air transportation an operating license requires a preliminary finding of public interest, convenience and necessity. The public interest requires service for the public. It therefore requires, that, if there be only enough business to support operation by one licensee, there must be only one licensee. This is a common place of public utility regulation. We discussed this principle at length in Carroll Broadcasting Company v. Federal Communications Commission." 12/

The Court thus left no doubt but that the decision in Carroll was a result of the application of a principle of public utility regulation.

32. In speaking upon the question of whether a hearing was required, the Court stated:

11/ 275 F. 2d 632 (D.C. Cir. 1959).

12/ Id. at 637-38 (emphasis supplied) (footnotes omitted).

> "If the TWA one-stop service is an effective competitor to the existing interchange to the extent of a 50% diversion of the latter's business, (assumed by the Board arguendo), it seems to us the TWA service, must, prima facie, be viewed as a potential competitor to some similar extent of any awardee of a transcontinental route Florida Coast to California Coast involving one or more stops. And if the Florida- California business via interchange is enough to support service on only one route, the same business available via one carrier, but with one stop, would appear prima facie to be not too much greater. If these things be so, an analysis and evaluation of the available business is necessary, if demanded. To state the matter in other terms, if mutual economic exclusivity is claimed and the claim has a reasonable prima facie basis, hearing on the question is required." 13/

33. The theory of economic mutual exclusivity can be validly applied only if the business regulated is regulated as a public utility. In the instant situation if the Commission were to designate the Crowder application for hearing upon the issue as alleged by Folkways, that the application is economically mutually exclusive with WHBT, then the possibility would be created that the Commission would find that the application is economically mutually exclusive with WHBT, and deny the application on that basis. This, it is respectfully submitted, is something which the Commission does not have authority to do. The radio broadcasting industry is not to be regulated as a public utility and the Commission has no authority to pass upon applications for licenses by making determinations and applying rules and concepts which are valid only when applied to public utilities. The Communications Act does not give the Commission authority to apply public utility regulations to the field of radio

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13/ id. at 640 (emphasis supplied).

broadcasting and when the Commission attempts to do so, the Commission at that point has overstepped its authority and is acting contrary to the Communications Act. When applying the rule of economic mutual exclusivity to an application for a new radio station the Commission is applying a rule of public utility regulation and is therefore acting outside of the scope of its authority.

34. The Communications Act rejects the concept of a public utility status for broadcast stations and the cases have upheld the principle that a radio broadcast station is not a public utility and is not to be regulated as such. 14/ Quite to the contrary, it has been long recognized that the field of radio broadcasting is one of free competition and not one of limited competition as is the case with public utilities. 15/

35. The principle that the broadcast industry is one of free competition and not of limited competition is not a concept taken from the past but a concept which is as alive and vital today as it was when the Congress enacted the Radio Act of 1927 to remedy certain chaotic conditions that existed in the radio broadcast field at that time.

36. Newton N. Minow, Chairman of the Federal Communications Commission, in an address before the National Press Club in Washington, D. C., on January 11, 1962, concluded his address as follows:

14/ Federal Communications Commission v. Sanders Brothers Radio Station, 309 U.S. 470 (1940); Easton Publishing Co., v. Federal Communications Commission, 175 F. 2d 344 (D.C. Cir. 1949).

15/ Federal Communications Commission v. Sanders Brothers Radio Station, supra, note 14; Easton Publishing Co. v. Federal Communications Commission, supra note 14; Mansfield Journal Co. v. United States, 180 F.2d 28 (D.C. Cir. 1950); Federal Communications Commission v. Stahlman, 40 F. Supp. 838 (D.D.C. 1941), aff'd, 126 F. 2d 124 (D.C. Cir.1942).

> "A free, open, competitive system has brought us to the highest standard of living. It has given us the opportunity to achieve the highest standard of life. I think that all of us would insist that the sinews of this system be extended to every phase of our lives — and I see no reason why television should be excluded from its benefits.
>
> "Today, in television, we find that situation where we are physically able to get a lot further toward free enterprise, and I fail to understand why so many otherwise staunch defenders of our way of life resist this direction.

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> Surely the broadcasters who are most sensitive to what they regard as tightening regulations should welcome this growth and should be willing to accept this competition. A wider field means a rich variety of services for many tastes — and more voices to share the resistance to Government.
>
> But to resist both competition and regulation is indeed short sighted.
>
> For just as surely as a commercial is wrapped around a station break — the television industry in the long run faces one result or another: More competition or more regulation.
>
> My vote is for more competition. And my faith is in the belief that this country needs and can support many voices of television — and the more voices we hear — the better, the richer, the freer we shall be." (emphasis supplied)

37. It should be remembered at this point that Sanders is the one recognized authorative case in this area of the law. Sanders is considered the landmark decision in construing the Communications Act insofar as it relates to the authority of the Commission to consider economic injury and economic impact when passing upon applications for new radio station authorizations. Sanders is also the landmark case in defining the radio broadcasting industry as one of free and open competition, and in completely repudiating the public utility concept of regulation as applied to the radio broadcast industry.

38. *Sanders* was the first United States Supreme Court decision in this area of the law. Since *Sanders* there has been no other Supreme Court decision dealing with this phase of the law. *Sanders*, therefore, stands as the only Supreme Court pronouncement upon this issue. When considered in the light of the *Delta* case, the decision in Carroll cannot stand with the Supreme Court's decision in *Sanders*. The decision in the Carroll case was never appealed, and therefore the Supreme Court was not given the opportunity to eradicate the erroneous conception of the radio broadcast field which was the underlying and determinative factor in the *Carroll* case. The *Carroll* case cannot stand the test of the Supreme Court as set forth in *Sanders*, because the *Carroll* decision stems from the theory that the radio broadcasting industry is to be regulated as a public utility, a concept which *Sanders* explicitly repudiates.

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39. It is therefore submitted, that the decision in *Carroll* being based upon an erroneous conception of the nature of the radio broadcasting industry, cannot be controlling in light of the *Sanders* case. The Commission cannot apply the theory of mutual economic exclusivity when considering applications for radio broadcast stations, and at one and the same time regulate the broadcasting industry upon the principle of "a free, open, competitive system" which parenthetically, as Chairman Minow has noted, has brought us the greatest good and to the highest standard of living. The two principles are legally mutually exclusive in their application. Furthermore, it would be an arbitrary action on the part of the Commission to apply the economic mutual exclusivity theory in the case of some radio stations and to apply and foster the free competitive theory to other stations.

40. It is therefore submitted, that the Communications Act does not give the Commission authority to consider the economic impact of a grant of a new station when it is passing upon such station's application. Further, in light of the fact that the radio broadcasting industry is not a public utility and is not to be regulated as a public utility, and, insofar as the decision in Carroll is based upon regulation of the field as a public utility, it is respectfully submitted that the Commission does not have the authority to consider a grant or denial of an application based upon the issue as proposed by Folkways. Since, in fact there are no other questions raised by the instant application the Commission should grant the application without hearing.

41. However, irrespective of the Commission's authority or lack of authority to consider the possible effects of competition and to entertain economic considerations in passing upon applications for new broadcast stations, the Commission is nonetheless without authority to pass upon the Crowder application upon a consideration of the issue of whether Harriman, and Roane County, Tennessee, contain sources of revenue sufficient to support the operation of an

additional standard broadcast station. To pass upon an application upon a determination of such an issue would mean that the Commission in effect assumed for itself the authority and power to decide that any given radio market can support only one or two radio stations, and, if a station or stations presently exist in that market, to deny applications for new broadcast stations in that market solely upon this consideration. This beyond a doubt, is regulation of the field of radio broadcasting as a public utility, and it cannot be questioned but that the Federal Communications Commission does not have the authority or the power to regulate radio broadcasting as a public utility.

42. When the Commission assumes authority to grant or deny an application for a new radio station on the basis of a determination that any given market can or cannot support more than one station, the Commission has placed itself in a position wherein it must regulate radio broadcasting as a public utility. Since there is no question but that the Commission has no authority to regulate the broadcast industry as a public utility, the Commission could not have the authority to place itself in the position of granting or denying applications for new broadcast stations on a principle of public utility regulation. The Commission would then be passing on such applications solely by applying the principle of economic mutual exclusivity. The reason that the Commission does not have the authority or power to deny a new station application upon a determination of such an issue, is because a negative determination thereon would require the Commission to regulate radio broadcasting in a manner in which it has no authority or power to regulate. Should the Commission decide that any given market area does not contain sources of revenue sufficient to support the operation of more than one radio station then the Commission would be required to deny any application requesting a second facility in that market area. The Court in Delta Airlines, Inc v. Civil Aeronautics Board, supra, clearly stated that such must be the effect of a determination of that nature upon that issue.

As the Court stated: "it therefore requires that, if there be only enough business to support operation by one licensee, there must be only one licensee.[16] And, as the Court correctly catagorized such action, "this is a common place of public utility regulation." [17]

43. The Communications Act of 1934 as amended, in Section 307(a) forbids the Federal Communications Commission from passing upon applications for a new radio broadcast station in such a manner. Section 307(a) of the Act commands "the Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefore a station license provided for by this Act."

44. If the Commission were to deny an applicant for a station license merely upon the finding that there already exists one station in a market area that could not support more than one station, the Commission would have denied an application without basing its denial upon a consideration of the public interest, convenience or necessity. This clearly would be unauthorized procedure by the Commission since the Commission's actions in this regard must conform to the Communications Act. It is no defense to such an argument to state that once the Commission determines that a given market area can support only one or two stations, that it automatically follows that the public interest, convenience and necessity will be served by a denial of all applications for an additional facility in that area. Even the Court in Carroll recognized the invalidity of such reasoning. The Court stated: "Of course the public is not con-

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[16] Delta Airlines, Inc. v. Civil Aeronautics Board, supra, note 11 at 638 (emphasis supplied)

[17] Ibid.

cerned whether it gets service from A or from B or from both combined. The public interest is not disturbed if A is destroyed by B, so long as B renders the required service." 18/ It might be noted parenthetically, that in a market area which could support only one station, if both A and B were licensed therein and B destroyed A the distinct possibility exists that due to the natural effects of a highly competitive market, B might well render a more meritorious service to

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18/ Supra, note 7 at 443.

the public after A has left the scene, than did A while it was the only radio station in the market. It should further be noted that as long as B was aware that any new licensee might enter his market and do to B what B did to A, B would necessarily realize that it would have to continue to render the best possible service and to strive constantly for improvement. The instant fact situation is a vivid example of this.

45. Thus it is clear that the licensing of a new broadcast station in a market area which can support only one station and which already has an existing facility, might well serve the public interest, convenience or necessity. However, if the Commission has the authority to pass upon an application based upon a determination of the issue as proposed by Folkways, then it would have precluded itself from considering the public interest, convenience or necessity. For as we have seen from Delta, should the Commission determine that the market area in question could support only one station, the Commission would then be required to deny the application without further consideration.

46. There is another very important ramification that would result if the Federal Communications Commission had the authority to pass upon an appli-

cation for a new broadcast station by a determination as to whether a market could support only one station or could support more than one station, and grant, or deny such application on this basis. By determinging that any given radio market area, in which there exists a licensed radio broadcast station, could support only one station, and by refusing to grant any additional radio station license for that area because of such determination, the Commission would then be granting a monopoly in that market area to whomever it chooses to be the one-station licensee. This result is a natural and necessary effect of such a Commission policy. Such a policy cannot be justified by the argument that upon the expiration of the existing station's normal three-year license, the Commission could refuse to renew the license and could thereafter grant a license in that market area to another applicant. The monopoly would still exist as would all the evils that flow from monopolistic control of any market. The Commission would merely be substituting a new person or entity as the holder of that monopoly. The monopoly would not be destroyed, it would continue to exist as before with the only change being, that someone new would reap the harvest of the monopoly to the detriment of the public interest, convenience and necessity.

47. Any type of monopolistic control in the field of radio broadcasting would be detrimental to the public interest. However, were the Commission to attempt to remedy an extremely bad monopolistic condition by refusal to renew the license and replace it with another monopoly that, while naturally detrimental to the public interest, was not so oppressive as the first; the problem would only be compounded.

48. The holder of the monopoly would naturally attempt to perpetuate the condition, by which he alone was benefiting, for as long as possible. Assuming that the Commission designated the renewal application for hearing because of particularly oppressive monopolistic practices the Commission would actually be inviting the licensee to increase the evils of the monopoly. Under §1.65 of the Commission's Rules the licensee could still operate the station during the pendency of the proceeding. The time that would elapse between the filing of the renewal application and the termination of the hearing would be considerable. If the Hearing Examiner found that the licensee's practices were so bad as to warrant a denial of the renewal application, then the licensee would file exceptions to the decision. Assuming the Commission would affirm the decision, the licensee could then appeal to the Court of Appeals and in turn the possibility exists for an appeal from an adverse decision there. Considering the minor pleadings that could be filed between the major steps outlined above, the whole process could well take in excess of five years.

49. During this five year period it is readily conceivable that the licensee would try to milk the market dry since there is a good possibility that he will lose his license. Thus the last stage of the monopoly would be worse than the first. If the licensee ever considered the public interest he certainly would not do so during the five or so years. Consequently, a progressively worsening monopolistic situation would continue from as long as eight to ten years.

50. The entire scheme of the Communications Act, insofar as it relates to radio broadcasting, is anti-monopolistic. This is evidenced by a reading of Sections 303(g), 211, 313 and 314. Because of this the cases have consistently

held that the field of radio broadcasting is one of free and open competition.[19]

As the Court stated in Sanders:

> "In contradistinction to communications by telephone and telegraph, which the Communications Act recognizes as a common carrier activity and regulates accordingly in analogy to the regulations of rail and other carriers by the Interstate Commerce Commission, the Act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus the Act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are necessary if free competition is to be permitted." [20]

As Chariman Minow has stated, it is the free and open competitive system that has brought America to the great heights of prosperity and freedom that we know today and a free, open, competitive radio and television industry is the keystone to a better, richer and freer America. [21]

51. On March 1, 1962, Chairman Minow addressed the National Association of Broadcasters Public Affairs/Editorializing Conference. The address concerned editorializing by broadcast stations. Mr. Minow emphasized that,

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[19] Federal Communications Commission v. Sanders Brothers Radio Station, supra, note 2; Easton Publishing Company v. Federal Communications Commission, 175 F.2d 344 (D.C.Cir.1949); Mansfield Journal Company v. United States, 180 F.2d 28 (D.C.Cir. 1950); Federal Communications Commission v. Stahlman, 40 F.Supp. 838 (D.D.C. 1941), Aff'd, 126 F.2d 124 (D.C.Cir. 1942).

[20] Supra, note 2 at 474.

[21] Address by Newton N. Minow before the National Press Club, Washington, D. C., January 11, 1962.

"Now, as never-before, we need more news — not less; more voices — not less; more sources of information — not less; more viewpoints and opinions — not less."

52. The Chairman in reminding the broadcasters of their obligation toward the American public stated: "It is up to you, the American broadcaster to translate the technical capacity for mass communication into actual performance. It is up to you to fulfill the country's need for many voices, many sources of information, and many viewpoints."

53. Mr. Minow then explained why this duty and obligation has in the present day fallen upon the American broadcasting industry. Stated Mr. Minow, "The plain and unhappy fact is that our traditional avenues of communication are contracting not expanding. We are witnessing an odd, and distressing, phenomenon. The population is increasing at an explosive rate; the big cities are now metropolitan area; and the suburbs are spreading like ink spread on a blotter. But in the eye of this hurricane, the number of metropolitan newspapers which traditionally have served our people is decreasing."

54. Chairman Minow went on to deplore the fact that the newspaper industry has evolved to a great extent into local monopolies and cited alarming statistics in this vein. "The population and newspaper birth rates are moving in opposite directions — more people, few printed sources of information. Some of the most startling statistics I know are that since 1945 the daily newspaper circulation has increased from 40-million to 60-million, while, in the same time period, the number of cities with daily newspapers under competing ownership has decreased from 117-million to 60-million. Today in America, there are just

slightly more than 1,440 cities with daily newspapers — but there are only 60 cities with competing papers. The others are either one-newspaper towns or cities with several newspapers under the same ownership." A monopoly in the radio broadcast industry is no more in the public interest than a monopoly in the newspaper industry.

55. Chairman Minow is certainly correct when he depicts the growth of local monopolies in the newspaper industry as "an odd, and distressing, phenomenon." How much more odd and more distressing a phenomenon would be the establishment of local monopolies in the radio broadcasting industry.

56. The Federal Communications Commission, being the grantor of licenses in a field of free and open competition, does not guarantee success within the industry. However, because the field is one of free competition, those involved do have a "right to succeed." Conversely, a broadcaster also has the "right to fail" because the right to fail is inherent in any competitive industry. It is this right which provides the greatest impetus to the constant improvement and refinement of services in a competitive industry. Congress intended that broadcasters should have this right to fail, which means the right to attempt to succeed in radio broadcasting no matter how great the odds may be against success. The Court in the Sanders case recognized that this was the intent of Congress when it stated:

> "Plainly it is not the purpose of the Act to protect a licensee against competition but to protect the public. Congress intended to leave competition in the business of broadcasting where it found it, to permit a licensee who was not interferring electrically with other broadcasters to survive or succumb ac-

> cording to his ability to make his programs attractive to the public." 22/

57. The Commission in Iredell Broadcasting Company (WDBM) 23/ also adopted this principle of the right of the broadcaster to fail. This decision by the Commission was the result of a protest filed against a Commission grant without hearing of the application of Iredell Broadcasting Company. The Commission stated:

> "Protestant's theory is that a grant of a construction permit is not in the public interest unless there is a reasonable likelihood that a proposed station will be able to survive and meet its obligations and liabilities; that applicant's resources and anticipated revenue are insufficient for construction and operation for a reasonable initial period of time

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22/ Federal Communications Commission v. Sanders Brothers Radio Station, 309 U.S. 470 at 475 (1940) (Emphasis supplied).

23/ 13 RR 996 (1957).

> without revenue and for operation for a considerable period at a loss; and that as a result thereof applicant is to be considered as not financially qualified. With this result we cannot agree. It is possible that applicant will fail to obtain enough revenues to sustain its operations. This might be the result of various factors, including applicant's inability to compete successfully against the existing station in Statesville. Also, the possibility exists that applicant may be forced to operate at a loss for a lengthy period. The fact that such possibility exist does not mean, however, that applicant must thus be financially unqualified." 24/

58. It is clear therefore that the Commission should not and cannot deny an application based upon a determination of the issue as herein proposed for to do so would in effect result in the granting of a monopoly by the Commission to an existing station. The Commission is completely without authority to act

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24/ Id. at 1002-3 (Emphasis supplied).

in this matter and regardless of its lack of authority, such action would be contrary to the intent and purpose of the Communications Act.

59. Even if it were assumed arguendo that the Federal Communications Commission had the authority and power to determine that a market could support only one station and thereby had the further authority and power to create, and grant, a monopoly to one radio station in a given market area, the Comission as a matter of policy could not exercise this authority. The Commission could only grant a monopoly to a radio station, to serve the public interest, convenience and necessity, if it also had the power and authority to regulate every aspect of the radio station's existence. If the Commission did not have such power to regulate the monopoly the Commission would have created an unregulated monopoly which most certainly could not be considered as serving the public interest, convenience and necessity. An unregulated monopoly can only lead to a deterioration of service with an increased cost to the public.

60. If the Commission granted such a monopoly it would also have to control the monopoly to insure that the public interest, convenience and necessity would be as well served by the monopoly holder as it is by the competitive

broadcasting industry. This would require that the Commission establish maximum rates which the station could charge and, of course, concomitant with this it would require that the Commission determine for the radio station what amount or percentage of profit to which it was entitled. It would also require Commission regulation of the duration, content and type of programs. It would require that the Commission give prior approval to any alteration or change contemplated by the broadcaster. The Commission would also of necessity require a voice in the formulation of the policy of the radio station as well as the business management of such station. The proposed purchase or major alteration of status of any substantial portion of the radio station's property would have to be subject to the Commission's examination and approval.

61. The glaring truth however is that the Commission does not have such regulatory powers. The Communications Act does not authorize the Commission to regulate the programs, rates, business decisions, etc., of a radio broadcast station. As the Supreme Court stated in the Sanders case: "But the Act does not assay to regulate the business of the licensee. The Commission is given no supervisory control over the programs, of business management or of policy."[25/]

62. Lacking this power to so regulate and supervise, the Commission would be left with only one choice. If the Commission determines that it has the authority to deny an application because there is an existing station in a market that will support only one station, the Commission by granting the latter station a monopoly must grant it an unregulated and unfettered monopoly. The Commission, could not, consistent with the mandate of the Communications Act to grant an application for a station license if the public interest, convenience or necessity will be served thereby, grant such an unregulated monopoly. Therefore, since the Commission does not have that authority it accordingly does not have the authority to consider, when passing upon an application, whether the market area of the application contains sources of revenue sufficient to support

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[25/] Supra, note 2 at 474.

the operation of two or more standard broadcast stations. If the Commission has the authority to grant monopolies it would then also necessarily have the concomitant authority to consider such a question. However, the Commission does not have the authority to grant a monopoly to a station, likewise it does not have the authority to consider and decide whether a market can support only one station and to grant or deny an application on the basis of such determination.

63. There is another purely practical aspect of this question. Even assuming arguendo, that the Federal Communications Commission did have the power and authority to decide such an issue, the Commission does not have the tools or the capabilities to make such a determination. Indeed, because of the very nature of such an inquiry, it is virtually impossible for anyone, regardless of his expertise in business management, economics, markets, etc., to accurately determine whether a market contains sources of revenue sufficient to support the operation of two or more standard broadcast stations. There are so many intangible elements which would have to be analyzed and considered in attempting to make such a determination, that the result could be nothing more than a mere guess. One would have to consider the business ability of the management of the station, the ability of the station to make its programs attractive to the public, the ability of the its salesmen to acquire heretofor untapped sources of revenue, the constant fluctuation of the markets, the business climate of the country as a whole, the financial situation of the business community within the market area, and many other equally nebulous factors. To say that one would have to analyze these elements is in essence an inherent contradiction because these elements by their very nature defy analysis.

64. The Commission has in the past considered the question of whether the determination of such an issue is actually possible. After considering the various elements of such an issue the Commission has consistently held that it is simply impossible to arrive at an accurate determination of such a question.

65. In *Voice of Cullman*,[26] the Commission stated its position on this subject as follows:

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[26] 6 RR 164 (1950).

> "*We do not believe that the results of establishing two stations in an area which at the time can allegedly support only one can be foreseen.* One station may rapidly drive the other out of business; both stations may survive either by attracting sufficient additional revenue or by reducing expenses without necessarily degrading their program service since quality of program service cannot be measured by cost alone; one or both stations may be content to operate at a loss either permanently or until the business situation permits the development of additional revenues. The possibilities are numerous, and since they lie in the future and stem from the interaction of individual purposes, energies, perseverence, and resourcefulness and even more the effect of any particular result upon the service rendered the public cannot be predicted. *Detailed information on the present business situation obtained at a hearing would not make the prediction substantially more possible.*" 27/

66. In January of last year the Commission reiterated its position when in Radio Associates, Inc.[28] the Commission stated:

> ". . . the Commission's policy has long been to require only that an applicant show sufficient funds to operate for a reasonable period of approximately 90 days. *Beyond this, the success and progress of the station in obtaining revenues becomes the significant factor bearing upon long range financial success as an operating station rather than one of financial qualification. Moreover, to predict in this area with any degree of accuracy is virtually impossible for the outcome depends upon such factors as the business accumen of the managers*

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[27] Id. at 170 (Emphasis supplied).

[28] 21 RR 368 (1962).

> and owners, the competitors and business climate, the network situation and the like." 29/

67. This 1962 decision by the Commission, thus brings up to date the position of the Commission concerning the possibility of determining whether a market area can support one or more stations. The Commission's position was most concisely stated in the proceeding of American Southern Broadcasters (WPWR).30/ In that case the protestant's claim of economic injury was based upon a study purporting to show that the advertising revenues available to stations located in Laurel, Mississippi, were insufficient to support both the existing stations and the grantee's proposed station, WPWR. In answer to this contention the FCC stated:

> "It is our opinion that the possibility that competition between radio stations may result in detriment to the the public by reasons of lowered quality of program service or the complete elimination of one of the competitors is, as a practical

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29/ Id. at 370 (Emphasis supplied).
30/ 11 RR 1054 (1955).

> matter, a fact which is incapable of proof. To permit the existing stations to utilize the protest procecure to force a useless hearing on the issues would, under such circumstances, appear to be an abuse of process." 31/

68. The fact that the Commission's statement that the allegation that a given market area can support only one station is an allegation incapable of proof and therefore a fact which cannot be determined prior to the grant of a new facility, was made prior to the decision of the Court of Appeals in Carroll, does not change the validity of such an observation. It is no more possible today to determine how many radio stations a given market area can support than

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31/ Id. at 1056 (Emphasis supplied).

it was in 1955. That this is true is borne out by the Commission's statements in Radio Associates, Inc., an opinion released in January of 1962, wherein the Commission reaffirmed its position that it is "virtually impossible" to arrive at an accurate determination of this question.

69. Looking at this question from a purely practical standpoint it is readily seen that the Commission's position in American Southern Broadcasters was a realistic appraisal of this problem. It is therefore obvious, and in fact the Commission has positively asserted, that even if the Federal Communications Commission had the authority and power to determine whether a given market area contained sources of revenue sufficient to support the operation of two or more standard broadcast stations, the Commission does not have the tools nor the capabilities with which to arrive at a determination of such an issue, short of making an arbitrary decision based upon personal feelings, theories and attitudes. In light of the fact that the Federal Communications Commission could not resolve such a question with any degree of certitude, the Commission is without authority to designate an application for hearing on this issue, with the view toward the ultimate grant or denial of the application based upon this issue alone, when the applicant has been found in all other respects to be qualified.

70. Additionally, since the applicant has met the established test of the Commission and has shown himself to be financially qualified to construct and initially operate the station without revenues, the Commission cannot require the applicant to make a greater showing of financial qualification based upon the reasonableness of the expected revenues.

71. The fact that a challenge has been made concerning the ability of an area to support additional broadcast stations, which of itself cannot be the basis of a denial of an application, does not justify the Commission in imposing a requirement upon the applicant that he prove, not only the availability of cash and liquid assets in a sufficient amount to permit construction of the proposed station and its operation, without revenues for a reasonable period of time, but also that the station will succeed in obtaining revenues sufficient to insure the success of the station after the lapse of the initial period.

72. The applicant is entitled to the same considerations on the part of the Commission as to whether or not he is financially qualified to construct and operate his proposed station as the Commission gives to all other applicants. To require the applicant to make a greater showing in relation to his financial qualifications, than is required of other broadcast applicants is an arbitrary action on the part of the Commission. It represents discrimination against the applicant based solely upon the geographical area in which the applicant desires to construct his proposed station.

73. However, aside from the consideration that a requirement imposed upon the applicant to make a greater showing of financial qualification than is imposed upon all other broadcast applicants would be a discriminatory and arbitrary action on the part of the Commission toward the applicant herein, the question of the reasonableness of such a requirement also leads to the conclusion that the Commission would be without authority to designate the instant application for hearing on the basis of such an issue. The Commission has had occasion in the past to consider this very question, and has consistently

held that it is without authority to require an applicant to make a greater showing on the issue financial qualification than its standard requirement that an application have sufficient funds to construct the proposed station and to operate the station, without revenues, for a reasonable period of time. Furthermore, the decision clearly shows that the Commission has recognized in the past that to require an applicant to make a greater showing is to require such applicant to bear the burden of proof upon an issue which the Commission has recognized is "impossible of proof".

74. One of the issues in Radio Associates, Inc., supra, was that of the financial qualifications of one of the applicants. Upon this issue the Commission stated:

> "There is proof that the necessary money to construct and operate the station for the initial period (Approximately 90 days) before the income of supporting revenues can reasonably be expected is available. It may be said that Radio Associates' ability to repay the loan within the time specified without arranging refinancing is very dubious because of the large sum (maximum of $300,000.00) that could be involved. However, the existence, of this possibility does not require the conclusion that Radio Associates is not financially qualified, for the Commission's policy has long been to require only that an applicant shows sufficient funds to construct and operate for a reasonable period of approximately 90 days. Beyond this the success and progress of the station in obtaining revenues becomes the significant factor bearing upon long range financial stability of a station and the question becomes one of financial success as an operating station rather than one of financial qualification. Moreover, to predict in this area with any degree of accuracy is virtually impossible for the outcome depends upon such factors as the business accumen of the managers and owners, the competitors and business climate, the network situation and the like." 32/

32/ Supra note 28 at 370f (Emphasis supplied).

75. In the proceeding of In re Sanford A. Schafitz, 33/the Commission was again called upon to determine what standard of proof the Commission could hold an applicant to in relation to his financial qualifications. The Commission in this vein stated:

> "It appears from past decision that the Commission in considering an applicant's financial qualifications is not concerned with the question of whether in the long run, a station can maintain

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33/14 RR 852 (1958).

> itself economically, but is concerned with the question of whether the applicant has sufficient funds to build and operate it for an initial period before revenues would begin to come in. On the basis of the above facts, it is clear that Mr. Schafitz is financially qualified, since he has sufficient funds available, and will use them to build and operate his station for at least three months irrespective of revenues." 34/

76. Again in Iredell Broadcasting Co., (WDBM), 35/the Commission was faced with the issue of the financial qualification of an applicant for a broadcast license. This decision by the Commission was the result of a protest filed against a Commission grant without hearing of the application of Iredell Broadcasting Co. The Commission in that case, considered and rejected the protestant's theory as follows:

> "Protestant's theory is that the grant of a construction permit is not in the public interest unless there is a reasonable likelihood that a proposed station will be able to survive and meet its obligations and liabilities; that applicant's resources and anticipated revenue are insufficient for construction and operation for a reasonable initial period of time without revenue and for operation for a considerable period at a loss; and that as a result thereof applicant is to be considered as financially unqualified. With this result we cannot agree. It is possible that applicant will

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34/Id. at 864b (Emphasis supplied).
35/13 RR 996 (1957).

> fail to obtain enough revenues to sustain its operations. This might be the result of various factors, including applicants ability to compete successfully against the existing station in Statesville. Also the possibility exists that applicant may be forced to operate at a loss for a lengthy period. The fact that such possibilities exist does not mean, however, that applicant must thus be financially unqualified. As we stated in re application of Southeastern Enterprises, 22 FCC 605, 610 [13RR 139], all that we require is a sufficient showing that the station can be constructed and operation commenced because 'the concept of public interest is not so exacting that it demands a licensee capable of sustaining great losses for long periods and pledged to do so'. Protestant has the burden of proof upon the issues as to the financial qualifications of applicant and has not established that Mr. Duke does not have sufficient resources to construct his station, to commence operation and continue operation for a reasonable period of time without advertising revenues." 36/
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> . . . ."

77. It is therefore abundantly clear that the Commission has consistently held that it does not have the authority to require an applicant for a new broadcast station to make a greater showing of proof of its financial qualifications than that required by the standard promulgated by the Commission itself.

36/ Id. at 1002-03.

78. The applicant has shown the availability of cash and liquid assets in a sufficient amount to permit construction of the proposed station and its operation, without revenues, for the normal three month period of time. It is therefore submitted that the Commission could not designate the application for hearing upon an issue which would require a determination of whether the applicant is financially qualified to construct and operate his proposed station and whether his estimates of expected revenues is reasonable. This would place upon the applicant an added burden of showing that his estimates of operating revenues is realistic when a challenge has been made concerning

the ability of the area to produce adequate revenues from those sources from which standard broadcast stations generally receive their support. In light of the fact that the applicant is financially qualified under the normal standard and that the applicant is in all other respects qualified, the Commission is without authority to designate the application for hearing upon such a financial qualification issue.

79. There is one final and very compelling reason why the aforementioned application of Crowder should be granted without hearing. Under the issue as requested by Folkways, the Commission would have to designate the application for hearing to determine a question of fact, which, after such a determination has been made by the Hearing Examiner, could not be the basis for a denial of the instant application. Therefore, since under the issue as proposed the Commission could not deny the application, the Commission would have designated the instant application for an unnecessary and useless hearing.

80. Folkways has, in fact, proposed only one general and basic issue. That issue is simple, to determine whether Harriman, and Roane County, Tennessee, contains sources of revenue sufficient to support the operation of an additional standard broadcast station.

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81. The Commission would thus, by designating the instant application for hearing upon that issue alone, force upon the applicant an unnecessary and useless hearing. The reason that this hearing will be useless is that under the issue of whether Harriman can support two or more standard broadcast stations, the Commission could not deny the instant application on a basis of

the determination of that issue. To state in another manner, the Commission could not deny the instant application upon an affirmative determination of the issue, and likewise the Commission could not deny the instant application upon a negative determination of that issue.

82. Under such an issue the Commission has only three possible courses of action. If the Commission determined that Harriman could support two radio stations, then the issues would be resolved in the affirmative in favor of the applicant. This would result in a grant of the application. The second possibility that exists is that the Commission could determine that Harriman could not support two radio stations but nonetheless find that the application should be granted. This, of course, as stated, would result in a grant of the application. The third possibility is that the Commission, after finding that Harriman could not support two radio stations, determines that they should not grant the instant application. However, even though the Commission so determined, the Commission would be powerless and without authority to deny the application. The reason for this is evident. Upon a negative determination of the issue the only thing that the Commission has found is that Harriman cannot support two radio stations. They have not determined that Harriman could not support the proposed radio station of the applicant, for this would be flying in the face of reality inasmuch as Harriman has in the past supported one radio station, namely WHBT, and if it were not for the existence of WHBT presently in Harriman the proposed radio station of the applicant could obviously be supported. Furthermore, by mandate of the Communications Act the Commission could not deny an application unless it finds that the

granting of such application would not serve the public interest, convenience and necessity. A determination that Harriman could not support two radio stations would not be a determination that a grant of the instant application would not serve the public interest, convenience and necessity. Since this would be the only issue in the hearing, the Commission could not, as stated previously, under the Communications Act by which it is bound, deny the Crowder application. In sum, no matter how the Commission resolved the issue in the proposed proceeding, the Commission could not deny Crowder's application. To designate an application for hearing upon an issue which cannot result in a denial of the application, is for the Commission to designate a useless hearing and to put the applicant to unnecessary and unreasonable expense. Therefore, in such a situation the Commission has no alternative but to grant the application without hearing for to do otherwise would, of necessity, either constitute a denial in an arbitrary and capricious manner or an abuse of the hearing process.

WHEREFORE, THE PREMISES CONSIDERED, is is respectfully submitted that the Commission should deny Folkways' alternative request to designate the Crowder application for hearing.

FURTHER, that the application of F. L. Crowder for a construction permit be granted without hearing.

IV. REQUEST FOR ALTERNATIVE RELIEF

83. The applicant firmly believes as a matter of law that under the Communications Act the Commission is obligated to grant the instant application without hearing. The applicant does not wish in any manner to compromise

the position which it has taken in the foregoing portions of its Opposition to Petition to Deny. However, should the Commission designate the application for hearing upon the issue of whether Harriman and Roane County, Tennessee, contain sufficient revenues to support an additional radio station then the applicant requests, that the Commission order Folkways Broadcasting Company, Inc. licensee of Station WHBT, Harriman, Tennessee, to submit an application for renewal of license for Station WHBT and that the renewal application be consolidated with the instant application of F. L. Crowder in a fully comparative hearing. Further, it is requested that the burden of proceeding with the introduction of evidence and the burden of proof upon the issue of the ability of the city of Harriman and the County of Roane be placed upon the party alleging such financial inability, Folkways Broadcasting Company, Inc. The legal and factual basis for this request is set forth below.

84. The decision of the United States Supreme Court in the Sanders case, as interpreted by the Court of Appeals in the Carroll case, and a recent decidecision of the Commission, require that in a factual situation such as might be involved herein, the Commission is under an obligation to consolidate the application for the new broadcast station and the existing station's renewal application for hearing in a full, comparative hearing. For convenience, as a preface for the applicant's contention, an abstract of the decision of the Commission is set forth immediately below.

85. The decision of the Commission referred to above is that of In Re Herbert P. Michels (WAUB). 37/ The facts in that proceeding are, for all

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37/ 17 RR 557 (1958).

practical purposes, on all fours with the facts that would exist in the situation involved herein, if the Commission designates the Crowder application for hearing. That proceeding involved an application by Michels for a new standard broadcast station at Auburn, New York, which was granted by the Commission without hearing. Petitions for reconsideration were filed against this action by WMBO, Inc., and Auburn Publishing Co., licensees, respectively of stations WMBO and WMBO-FM, Auburn, New York. These latter two stations were the only other radio stations in Auburn and these two stations had duplicate programming and were under common control. The basis of the petitions was that the grant was not in the public interest on the grounds that the economic impact on existing broadcast stations by the operation of an additional broadcast station in Auburn, New York, would be detrimental to the public interest. The Commission granted the petition in part and designated the application for hearing. The Commission however in that proceeding, also took the following action:

> "There remains for discussion only the question of the scope of the hearing on the WAUB application. Pursuant to the decision in the Carroll case, the Commission must determine whether the economic effect of another station in the Auburn area would be to damage or destroy service to an extent inconsistent with the public interest. But, if the answer to that question is in the affirmative, we do not believe that the public interest would be served by a denial of the WAUB application without further consideration of other public interest factors. For if, as an affirmative answer would imply, the city of Auburn has already reached the absolute limit of broadcast services which it can economically support, then it is all the more in the public interest that the limited service should be provided only by the best qualified person. In other words, if the people of Auburn are to be deprived of a choice of local programming, at the very least they should be entitled to assurance that their needs would be met to the highest possible degree. Further, under the circumstances it is

> highly desirable, from the viewpoint of both the public and the operators involved, that the choice of the best qualified operator should be made at the earliest possible time. Therefore before designating the WAUB application for hearing the Commission is directing the licensees of stations WMBO and WMBO-FM to submit applications for renewal of licenses in order that they may be consolidated for hearing in a comparative proceeding with the WAUB application, if necessary to reach such issue." 38/

86. WMBO, Inc., and Auburn Publishing Co., filed petitions for reconsideration of the above order. The Commission affirmed its order and disposed the petitions in the following manner:

> "Petitioner's main objection to the Order of July 30, 1958, is that, since their current licenses do not expire until June 1, 1960, the Commission's action in calling for the WMBO and WMBO-FM renewal applications at this time is in effect a conditional revocation of their authorizations without recourse to the procedures set forth in Section 312(a) of the Communications Act. This contention is without substance. No matter what the result of the hearing indicated herein, their current authorizations to operate until June 1, 1960, will in no way be affected -- absent any revocation proceedings not now contemplated. Therefore, at the very worst insofar as petitioners are concerned, the decision in the contemplated hearing could only be that under then existing circumstances their licenses would not be renewed.

38/ Id. at 560.

> While this early hearing on their renewals may be an inconvenience to petitioners, we consider that the public interest requires the earliest possible resolution of the issues. Early disposition of the issues would likewise be of benefit to petitioners, a fact which they overlook in their arguments.

> "Petitioner would apprently prefer that only the subject application be set for hearing on the economic issue, and that their applications be consolidated therewith in a comparative proceeding only if it is found that an additional station in Auburn would be contrary to the public interest. If that procedure were followed, it is possible that the final decision would not be reached until near the end of their current license periods, with the result that, if adverse to petitioners, they would have to cease operations with a minimum of notice. Under the procedure contemplated in the Commission's Order of July 30, 1958, the

> decision would be reached much earlier, with the result that petitioners would have a correspondingly longer period of time in which to arrange for the orderly termination of their business. Hence, not only the public interest, but also petitioner's interests would be better served by the earliest possible resolution of the issues.
>
> "Petitioner's assumption that there is something 'punitive' in the calling for renewal applications is likewise without merit. As a matter of record, we note that petitioners voluntarily filed on June 20, 1958, their pleading in which they contended that operation of another aural broadcast station in Auburn, New York, would be detrimental to the public interest in that it would adversely affect the program service of WMBO and WMBO-FM the only operating aural broadcast stations in Auburn. Having set the wheels in motion by involving public interest considerations, petitioners should not be permitted to complain that a hearing is contemplated in which, if it is determined that more than one broadcast service in Auburn would be contrary to the public interest, it will then be determined whether the public interest would be better served by the continued operation of petitioners' stations or by the new proposal of Herbert P. Michels. As indicated above, the Commission's action was motivated by considerations of the public interest the keystone of the Commission's regulatory powers and obligations. Further the rule (now §1.328(c)) providing for the early filing of renewal applications has been in effect for many years, and, although used sparingly, has been invoked when it appeared in the public interest to do so. See, for example, Narragansett Broadcasting Co., 7 Pike and Fischer RR 37, 63 (1949), and Albuquerque Broadcasting Company, 25 FCC 683, 791-793 (1958)." 39/

87. When the Commission designates an application for a new standard broadcast station for hearing, due process requires that there exists as a result of the hearing a possibility of an ultimate grant or ultimate denial. To state this another way, when an application is designated for hearing the

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39/ In re Herbert P. Michels (WAUB) 17 RR 560(b) - 560(c) (1958).

result of the hearing can be nothing other than an ultimate grant or ultimate denial of the application. It is recognized, of course, that there is available procedures for exceptions to the initial decision and appeals from the Commission's decisions. Nevertheless, whatever the legal courses taken, the one hearing will result in either a grant or a denial of the application.

88. If the Commission does not call the WHBT renewal application and consolidate it in a fully comparative hearing with the Crowder application, then there exists the possibility that the hearing upon the Crowder application will not result in a grant or denial of the application. If the Commission should determine that Harriman and Roane County have adequate sources of revenue to support an additional station, then of course there is no problem. If however, without calling the WHBT renewal, the Commission determines that the area cannot support an additional station the result would be two hearings instead of the required one. Under the doctrine of Sanders and Michels, once the determination is made that an area can support only one radio station, the Commission must then determine whether the applicant or the existing station, in its use of the only available facility, will best serve the public interest, convenience and necessity. Therefore if the Crowder application was designated for hearing alone and that hearing resulted in a determination that Harriman and the surrounding area could not support an additional radio station, Sanders and Michels then require that the Commission determine whether the applicant or the existing station would better serve the public interest in the Harriman area.

89. It is evident therefore from the above, without calling the WHBT renewal for a comparative hearing with the Crowder application, a hearing designated for the Crowder application would not be one where the only possibility of a final determination of the issue is that of either a grant or a denial of the application. As a result the applicant would have been denied his right

to due process. The Commission does not have the authority to designate an

application for hearing the purpose of which is to determine whether the application is to participate in a second hearing. Yet this is exactly what will happen if a comparative hearing with WHBT is not held. Such a process as outlined above, could result in years of costly hearing imposing upon the applicant an unbearable financial drain and imposing costly procedures upon the Commission and wasting and duplicating the time of Commission personnel. It is not only grossly unfair for the Commission to require such waste and expenditure but, in light of the fact that such could be eliminated by a consolidated, fully comparative hearing as requested herein, it would amount to an abuse of process.

90. The Commission under the Communications Act is bound to allocate radio facilities so as to provide for a fair, efficient and equitable distribution of such facilities and in this area the Commission can only grant applications if such would serve the public interest, convenience and necessity. When, because of various factors, the Commission must choose between one or more but less than all facilities, it is bound by the Communications Act to authorize only the one or more facilities which would best serve the public interest, convenience and necessity. The Sanders case is explicit in recognizing that the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without causing objectionable interference to others, provided he make an initial showing of financial qualification, adequacy of equipment and compentency. Sanders clearly stated that the Act did not propose to protect a licensee against competition. Rather, the purpose of

the Act was to protect the public. The Court in the Carroll case based its decision upon the theory, as stated in that case, that the public interest may be in the licensing of only one station rather than two stations in a given area where available revenue will not support good service in more than one station. Nowhere did the Court say that if an area could support only one station, that the public interest would be served by allowing only the existing station to

broadcast in that area. What the Court did say, was that if the Commission determined that the public interest would be served by licensing only one station in a given area, the Commission then must license that station which will best serve the public interest, convenience and necessity. The Court went on to give a hypothetical example of existing radio station A and applicant B. The Court stated that the public interest was not concerned with whether the service was rendered from A or from B as long as the one authorized renders the service which will best serve the public interest, convenience and necessity. Therefore, in the present case if it is determined that Harriman can support only one radio station, the public interest is not concerned with whether the licensee is F. L. Crowder or Folkways Broadcasting Company, Inc., as long as the one that is licensed renders that service which will best serve the public interest, convenience and necessity. It is only when the one licensed is not the station that would best serve the public interest, convenience and necessity, that, in the words of Carroll, the public interest is "disturbed".

91. Therefore, the Sanders case as interpreted by Carroll, is a mandate that when the Commission has determined that a market area can support only

one station, the Commission is under an obligation to license that station which will best serve the public interest, convenience and necessity. Thus *Sanders* and *Carroll* directed as to *what* result the Commission must reach in a given situation. However, *Sanders* and *Carroll* did not suggest to the Commission *how* this should be done. The Commission is under the obligation to process applications in the most expeditious manner. Undoubtedly, the Courts felt that the Commission was best qualified to determine the manner in which the *Sanders* and *Carroll* doctrines were to be carried out. In the Commission's decision in *Michels*, the Commission set forth the process by which *Sanders* and *Carroll* could be most effectively carried out and which would be the most orderly and expeditious method in resolving this issue, to both the parties and the Commission. The Commission stated in *Michels* that the public interest *requires* the earliest possible resolution of the issues. Certainly, noone would deny that the public interest requires that and no less. The Commission, after considering the various possibilities available, determined that only by calling for the renewal application of the existing station's license, and by consolidating that application with the application for a new station in a consolidated, fully comparative hearing, could this requirement of the public interest be met. Therefore, unless and until the Commission conceives of a method which will permit of an earlier resolution of the issues in fact situations such as herein involved, the Commission is under an obligation to follow the procedure as set forth in *Michels*. To do otherwise, would be to deny the applicant his right to an expeditious hearing and determination upon his application. It is as much in the public interest to the people of the Harriman area that the

Commission determine at the earliest possible time which station will best serve that area as it is for them to have that station licensed. Therefore, assuming arguendo, that the Commission designates the Crowder application for hearing, the Commission would be acting contrary to the public interest, convenience and necessity if it did not order Folkways Broadcasting Company, Inc., to submit within a reasonable time, an application for renewal of its license for Station WHBT and order that the applications of Crowder and WHBT be consolidated into a fully comparative hearing to determine if necessary, which of the two applicants, if granted, would best serve the public interest, convenience and necessity.

92. If the Crowder application is designated for hearing, the applicant requests the Commission as its final prayer for relief, to place the burden of proceeding with the introduction of evidence and the burden of proof upon Folkways, regardless of whatever disposition is made by the Commission of the instant Opposition to Petition to Deny. It was Folkways through its petition to deny application filed December 10, 1962, who requested a hearing

upon certain alleged issues which it raised. Therefore, fairness as well as the orderly conduct of Commission proceedings, requires that the burden of proving these allegations be upon the one who asserted them, in this case, Folkways. As shown in the forgoing portions of this pleading, the other so-called "issues" raised by Folkways Petition to Deny are so without merit that they should not even be considered. However, should there be any additional issue due to Folkways' petition, for the reasons given above, the burden upon these issues should also be placed upon Folkways.

93. In a proceeding such as this, upon an application for a construction permit for a new broadcast station against which petition to deny has been filed, the burden of proceeding and the burden of proof is never automatically upon the applicant. Section 309(e) of the Communications Act provides in part that: "The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, *except with respect to any issue presented by a petition to deny or a petition to enlarge issues, such burdens shall be as determined by the Commission.*" (Emphasis supplied).

94. The history of Section 309 indicates that in many such situations the burden was affirmatively placed on the protestant. Prior to September 13, 1960, Section 309(c) read in part: "In any hearing subsequently held upon such application issues specified by the Commission upon its own initiative or adopted by it shall be tried in the same manner provided in Subsection (b) hereof, that with respect to issues resulting from facts set forth in the protest and not adopted or specified by the Commission, on its own motion, *both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the protestant*." Prior to January 20, 1956 Subsection (c) read in part as follows: "In any hearing subsequently held upon such application all issues specified by the Commission shall be tried in the same manner provided in Subsection (b) hereof, but with respect to all issues set forth in the protest and not specifically adopted by the Commission, both the burden of proof shall be upon the protestant." (Emphasis supplied).

95. There has never been in the history of the Commission, a hearing upon the issue as requested by Folkways in which the burden of proof was

placed upon the applicant. Although there have been a number of hearings in which the burden of proof on such issue has, in the past, without exception, been placed upon the protestant. The Commission has never placed the burden upon the applicant. In such a proceeding, when the applicant has proven that it possesses sufficient cash and liquid assets with which to construct the proposed station and to operate it, without revenues, for approximately three months, the Commission has always engaged the basic presumption of the economic sufficiency of the market to support the proposed station. The burden has always therefore been upon the one who would attempt to rebut this presumption.

96. Three respresentative cases in this area are Southeasten Enterprises, 40/ Iredell Broadcasting Co., 41/ and American Southern Broadcasters. 42/ In each of these cases a protest had been filed against an application in which the petitioner alleged the insufficiency of the market to support the new station. In each of these cases the petitioner submitted extensive economic data in an attempt to support his position. Economic surveys, charts, field surveys by economists and the like, were submitted. In each case the applicant offered only a general denial in response. Nonetheless, the Commission in these and all other cases concerning this issue, has placed the burden of proof upon the protestant on the fact that the presumption above stated had not been overcome. If the presumption in the three cited cases could not be overcome by extensive economic exhibits against only a general denial; how much more readily should the presumption be prevailing in the instant situation where Folkways offered

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40/ 13 RR (1957).
41/ 13 RR 996 (1957).
42/ 11 RR 1054 (1955).

much less in the way of proof than the protestants in the cited cases and the applicant has come forward with much more than a general denial. In the instant situation the applicant has itself come forth with extensive statistical and economic data. It is clear therefore in the light of the facts of this proceeding and in accordance with the Commission's past procedure, the burden of proof should be upon Folkways Broadcasting Company, Inc.

WHEREFORE, THE PRESMISES CONSIDERED, it is respectfully submitted that the Commission should order Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee to submit within a reasonable time, an application for renewal of its license.

FURTHER, that the Commission should designate the renewal application of WHBT and the instant application of F. L. Crowder for a consolidated, fully comparative hearing upon the following issues:

1. To determine whether Harriman, Tennessee and the surrounding area contain sources of revenue sufficient to support the operation of two or more standard broadcast stations.

2. That the burden of proceeding with the introduction of evidence and the burden of proof upon the above issue number 1 be and is placed upon Folkways Broadcasting Company, Inc., licensee of Radio Station WHBT.

3. To determine, in the event the Commission finds in accordance with the above issue number 1, that Harriman and the surrounding areas can sup-

port only one radio station, which applicant would best serve the public interest, convenience and necessity if granted.

Respectfully submitted,
F. L. CROWDER, tr/as
Harriman Broadcasting Co.,

By: /s/ Vincent A. Pepper
Vincent A. Pepper

By: /s/ Robert F. Corazzini
Robert F. Corazzini

Smith & Pepper
Its Attorneys

1111 E Street, N.W.
Washington 4, D.C.

January 8, 1963

ATTACHMENT NO. 1

HARRIMAN, TENNESSEE, THURSDAY, JULY 27, 1961

HARRIMAN'S POPULATION BACK TO 6104

Harriman's population is back up over 6000.

The Tennessee Planning Commission has certified Harriman's new population at 6104.

This is a gain of 173 over the 1960 Federal Census.

The gain is the result of annexation of Lakeview Heights and other areas near the proposed Harriman Public Housing Project.

These areas were annexed by City Council by ordinance passed on final reading January 6.

After an annexation the State Planning Commission must certify the gain in population for the allocation of state funds, many of which come to a city on basis of its population.

The 1960 Federal Census gave Harriman's population at 5931.

This was a 502-drop from 1950, when the population was 6433.

The decline between 1950 and 1960 was because many Oak Ridge construction workers were living here in 1950 and to the fact that most new homes built during the decade were built outside the city limits, thus with families moving to the fringe areas.

ATTACHMENT NO. 2

THE HARRIMAN RECORD
ADVANCING INTO THE FUTURE—BOOSTING, BUILDING, BENEFITING
[illegible] HARRIMAN, TENN., DECEMBER 7, [illegible] TEN CENTS A COPY

[illegible]
INSIDE: FOUR PAGES OF CHRISTMAS PARADE PICTURES—SEC. B
S. K. JOHNSON DIES—BURGLARS LOOT 3 FIRMS—CAR HITS TRAIN

COURT SUIT COMPROMISED; ANNEXATION GOES THROUG

By WALTER T. PULLIAM
Editor, The Harriman Record

Chancellor A. G. Shumate this morning (Thursday) signed a decree, dismissing the Chancery Court sui holding up Harriman's fringe area annexation.

Dismissal of the suit followed a compromise betwee the city and those who filed the annexation-blockin suit on April 15, 1960.

South Harriman, Pine Hills, Emory Gap Emory Heights, Meadow View Gardens and Bazeltown tha will become a part of the city in accord with terms of the compromise, making Harriman a city of 11,000 to 12,00 population.

The compromise provides:

1. That the annexation not become effective unti January 15, 1963.

This provision gives the city over a year to plan services for the annexed areas. It brings the annexed residents into the city in time to vote in the next city election in June 1963.

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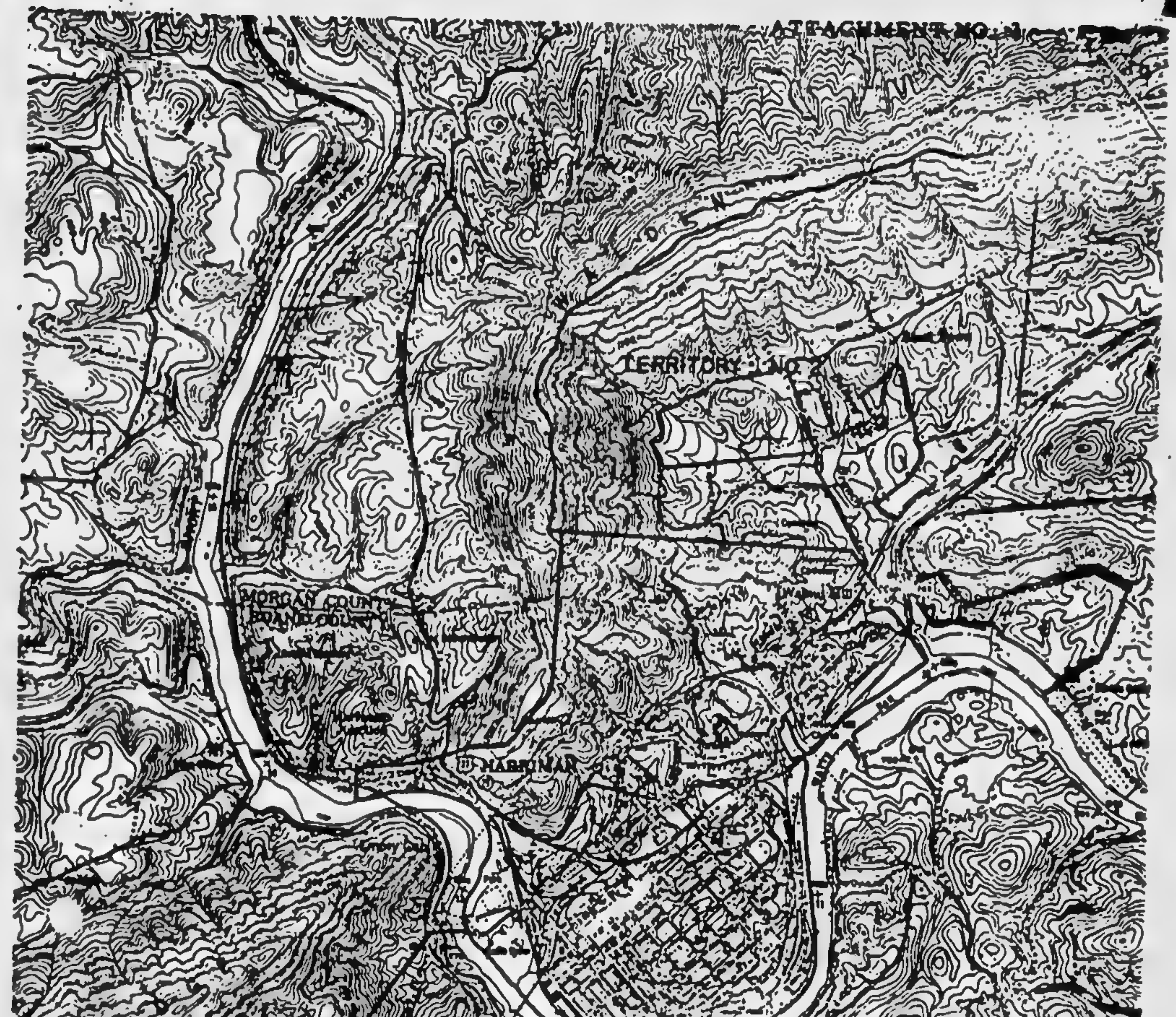
ATTACHMENT NO.
RIVER
TERRITORY NO. 2
MORGAN COUNTY
ROANE COUNTY
HARRIMAN
TERRITORY NO. 1

MAP SHOWS TERRITORIES—TERRITORIES NO. 1 AND NO. 2—INCLUDED IN ANNEXATION COMPROMISE. EFFECTIVE JAN. 15, 19

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CITY OF HARRIMAN

DEPARTMENT OF ACCOUNTS AND RECORDS

MUNICIPAL BUILDING

HARRIMAN, TENNESSEE

ATTACHMENT
NO. 4

December 26, 1962

Mr. Freeman L. Crowder
Harriman, Tennessee

Dear Mr. Crowder:

In answer to your inquiry as to the new population of Harriman as of January 15, 1963, it will be between eleven to twelve thousand(11,000-12,000). We will take a census around March 1st and at that time we can give you a more accurate figure on our new population.

Hoping that this is satisfactory to you, I remain

Respectfully yours,
A. B. Foster
A. B. Foster,
Mayor

ABF/b

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ATTACHMENT NO. 5

Page 6-B HARRIMAN, Tenn., RECORD Thursday, Aug. 9, 1962

oane Strong Market, Survey Shows

pecial To The Record.

NEW YORK — Roane Coun- y stands out as a strong arket, with a buying power at is better than average. e finding is based on a national economic survey cover- ng the past year's business ctivity.

Despite the fact that the na- on was just emerging from depression, which carried er to the early part of 1961, usiness locally showed a pid recovery.

The copyrighted report, hich gives figures on income nd spending for communities every part of the country, as just been issued by Sales anagement.

It shows that income in oane County was high in the ear. After payment of person- taxes, there was left a net $52,717,000.

How much this amounted to, t the family level, was de- ermined by dividing the in- me by the number of households. The average per house- old. was $4,749, a gain over e previous year's $4,520.

The rise, 5.0 percent, com- pares with a 1.0 pe-cent drop the United States and a 4.1 percent drop in the East South Central States.

What was done with all this money? For several months ocal consumers continued pending cautiously as they ad during the depression.

Then, as the signs of the pturn became more convincing, they began to loosen up. Toward the end of the year, when the economy was again in full swing, they were spending freely.

The vigor of this late wave of buying turned the year into a good one for Roane County's retail stores. Their sales volume reached $29,173,000.

The survey gives each community a rating as to market strength, taking into account such factors as income, retail sales and population. The composite figure is called an "index of buying power."

Roane County is given an index rating of .0156, which means that it is considered capable of producing that percentage of the nation's total retail business.

Since less than that was done last year, .0133 percent, it is apparent that some of the local business potential is yet to be realized.

Economists are predicting that the nation's consumers will continue spending at their present rate for some months to come, barring unforseen events on the international front and instability at home.

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ATTACHMENT NO. 6

Page 6-B HARRIMAN, Tenn., RECORD Thursday, Nov. 1, 1962

Equity In Roane Homes High

Special To The Record.

NEW YORK — Residents of Harriman have a huge amount of money invested in their homes.

Their equity in these dwellings, representing market value minus outstanding mortgage debt, comes to a healthy $3,330,000.

This refers solely to non-farm dwellings which are occupied in whole or in part by their owners.

Locally and elsewhere across the country, Americans have built up vast assets for themselves over the years by acquiring their own homes.

Nationally, the value of these holdings is placed at more than $400 billion, subject to mortgages of $117 billion.

The facts and figures come from the recent Census of Housing and from studies made by the University of Michigan's Survey Research Center.

In Harriman, there were 961 such home-owner dwellings, some new and some old, listed as of 1960. Their value, based on the median asking price, is placed at $6,300 per unit.

It adds up to a grand total of $6,054,000 in market value locally.

The total has been growing, year by year, in line with the general rise in realty prices.

How much would local home owners be able to realize from their property, if they were to sell it. In other words, what is its net worth? The amount of mortgage debt is the key.

The housing census shows that there are mortgages on 55 percent of the non-farm dwellings in the region encompassing Harriman.

The average debt per mortgaged home in the area is about 6 percent smaller than the average in the rest of the United States.

Taking these findings into account locally, the amount of outstanding mortgage debt on such housing within the city is estimated at $2,724,000.

It leaves $3,330,000 as the net asset value, which is the equity that local home owners have in their property.

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ATTACHMENT NO. 7

Page 6-A HARRIMAN, Tenn., RECORD Thursday, Aug. 10, 1961

Bank Deposits, Loans Both Rise

Deposits in Roane County banks were up $1.018,026.62 during the first six months of 1961 from what they were during the last six months of 1960.

Loans in the county's banks were also up $413,045.42.

According to Charles L. Sadler, president of First National Bank of Harriman, this would icate that Roane County residents had more cash on hand during the first six months of 1961 than they had in the preceding six months.

"There has been a good bit of credit expansion in Harriman as well as in the rest of the country," Mr. Sadler explained. "Bank deposits and also total loans have been increasing over the last five years," he said.

The upward trend in both deposits and loans is taking place in all of Roane County's banks.

Gross resources in the First National Bank and Trust Company of Rockwood were up 20 percent during the past six months, according to Harry T. Burn, president of the bank.

Kingston Bank and Trust Company had an increase of $184.501.52 in deposits and an increase of $49,157.98 in loans and discounts.

Total deposits in First National Bank of Harriman increased $122,427.39 during the past six months. Loans in that bank were also up $19,517.29.

Mr. Burn said most of the increase in deposits at the First National Bank and Trust Company of Rockwood was in checking accounts and that a small amount of the increase was in savings accounts. However, of the $122,427.39 in deposits in the First National Bank of Harriman, over $115,000 was in time deposits, that is, in saving accounts.

The average number of deposits in the First National Bank and Trust Compay of Rockwood was up during the past six months from 457 per day to 626 per day, Mr. Burn said. Mr. Burns said that loans 15 percent.

J. Clyde Parker, president of Kingston Bank and Trust Company, said one explanation for the fact that more people in the Kingston area had more in his bank also were up about money was that many of them had bought homes on time when they moved there to work at Oak Ridge and that they were beginning to get them payed for.

Other reasons which Mr. Parker gave for increase in bank deposits and loans were: 1) more people moving into the area; 2) an increase in employment caused by a number of construction projects in tha county; 3) a general increase in business.

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ATTACHMENT NO. 8

Thursday, Aug. 16, 1962 HARRIMAN, Tenn., RECORD Page 1-B

Roane Countians High On Pensions

Special To The Record.

NEW YORK — The larger incomes that Roane County residents earned over the years are now producing added benefits for them.

They are generating extra dividends in the form of larger pension checks for those who have retired or have become disabled.

The size of these checks, which are going to former workers and their families under the insurance program of the social security system, is in proportion to the wages earned during a period of years prior to retirement. Because their earnings were greater, their contributions to the pension fund were greater.

The net results, for local residents, is retirement checks that are bigger, on the average, than those going to people in most parts of the East South Central States.

The facts and figures were made public in the annual report of the Bureau of Old-Age and Survivors Insurance, just released. They are based on the payment schedules in effect at the beginning of this year.

Recipients in Roane County, they show, were getting checks amounting to $648 a year, as compared with $627 a year elsewhere in the East South Central States. In the State of Tennessee the average was $634.

The overall amount being collected by local residents has been going up, year by year, as the scale of benefits has been boasted and as more people have become eligible for coverage.

As of January 1, 1962, total payments were at the rate of $2,361,648 a year. On the receiving end were some 3,641 retired workers, disabled workers, their spouses, widows and widowers, children and parents.

How great a change has taken place in the last three years may be seen by going back to the figures released then.

At that time, there were only 2,523 in Roane County who were getting benefits. They were collecting some $1,497,192 a year. Total payments now are 58 percent higher.

People are giving more and more consideration in their planning to the retirement protection they are setting up for themselves through social security. They find it releases some of their income for use in other directions.

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ATTACHMENT NO. 9

STATEMENT
of
Walter H. Scarbrough

To begin with, I would prefer not to include a statement of mine as outsider with regards to this application in question. But since my me has been the object of a statement by another outsider, then I feel at I must make a statement and in the outset brand the statement of Mr. B. Willis, Jr., in the complainant's protest as a COMPLETE falsehood.

In November, 1960, I employed Mr. Willis as a salesman at the radio ation in Oneida, of which I am manager. Since Mr. Willis was not experienced in radio advertising, having been a jeweler by trade, and because e two of us lived in Roane County and commuted to Oneida, a distance of ome 55 miles from Harriman, we decided that on our daily strips to the neida station we would share rides and this would give us an opportunity o discuss the problems of selling radio advertising, and programming, etc., nd for us to discuss customers of our radio station and the problems tached to Mr. Willis's contact of these customers.

Thus it was natural on many occasions that rates were discussed, comrative rates between our station and other stations, many times the rates f WHBT in Harriman. Also programming and other aspects of operating a adio station were discussed in these "idle gossip" conversations to and rom our work each day. Many times the observation was made by Mr. Willis nd also by myself, the disparity of rates...those of the station in questio HBT in Harriman, and the Oneida station, the Rockwood station, the Jamesown station, the LaFollette station, Southeastern Kentucky stations in our rea, the Knoxville and Oak Ridge stations, all stations...a general pattern f radio advertising and costs of commercials. AT NO TIME DURING THESE NVERSATIONS WAS ANY STATEMENT MADE BY ME THAT MR. CROWDER PLANNED TO USE NY RATE STRUCTURE ON ANY STATION THAT HE HAD OR PROPOSED TO HAVE. In fact, r. Crowder had never indicated to me what rate structure he planned.

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The fact is that at different occasions Mr. Willis attempted to draw conversation from me regarding Mr. Crowder's application for a station in Harriman. Mr. Willis expressed several times his belief that I was going to have something to do with the new station proposed, which I completely denied and absolutely would not talk about any of Mr. Crowder's plans whic I knew about. I believed that his application, the work he had done on it nd the information he had entrusted to me were confidential, and therefor of no concern to anyone else, and certainly not in the way of my giving information about what Mr. Crowder planned to do about any part of the operation of a new station.

Mr. Willis expressed to me many times his desire to sell in the Harriman area. He expressed to me the belief that he could sell many accounts in the Harriman area that were not being serviced by WHBT and certainly if a lower rate than that WHBT charged were available that he could do a lot better job actually than what he was doing in Scott County. Having knowledge personally of some of the businesses in Roane County from having sold radio advertising, and newspaper advertising, to them for some 0 years, I felt that there were accounts which were not being obtained by WHBT. In fact, many businessmen in Harriman had expressed their desire to me many times that they would like for me or Mr. Crowder or somebody to provide them with a radio outlet in which they could advertise as they formerly advertised on WHBT when Mr. Crowder had the ownership of the station and I was working as commercial manager. I also knew that the present licensee of WHBT, Mr. Kenneth Crosthwaite, had made the statement, in the presence of me and two other salesmen who were working at WHBT at that time, that he was not interested in the smaller advertisers, of which Roane County is full...but that he would rather put his efforts on a few large accounts and let the smaller advertisers go somewhere else to get their advertising.

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Of course, during many days of driving back and forth during the 18 months in which Mr. Willis was connected with my radio station, many discussions came up similar to this. On one occasion Mr. Willis told me that he had information that WHBT was going to be taken over by Roane County government and sold for the taxes that were held against it, and that he would be interested in purchasing the station. He asked me what thought the station could be bought for and if I would be interested in going in with him and trying to get the station. The discussion centered on our own personal beliefs as to what the station would be worth and what ould be done with it. Of course, even though this was before Mr. Crowder had indicated definitely that he was interested in applying for a new CP, I realized the Commission's manner of operation, and knew the communications laws would require much more than just a willingness of someone to take over the station. I knew it would involve a long and expensive legal battle and so I discouraged discussion of the subject. During this talk each of us gave personal observations regarding the present operation of the station which is not pertinent to this statement. Rate structures, programming, merits of announcers and other aspects of station operation were discussed.

But again I want to say that at no time, absolutely at no time, in any of these conversations did I ever answer any kind of a direct question regarding Mr. Crowder's proposed plans by saying that Mr. Crowder planned to do ANYTHING. The simple truth of the matter is that on almost all occasions when the subject was brought up on definite statements on what was happening, or what was going to happen, or what was expected to happen, with regard to Mr. Crowder's application for a new station, I absolutely fused to make any comments and most of the time steered conversation some other way.

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Mr. Willis informed me on one occasion that it was common knowledge around Harriman that I was going to be the manager of the new station when Mr. Crowder obtained the CP. I informed Mr. Willis at that time that this was news to me, that the people of Harriman knew more than I knew, and that at that time Mr. Crowder had absolutely never asked me to work for him in his proposed new station. I had not told such a story to anyone nd I was sure Mr. Crowder had not made such a statement. That was the truth then, that is the truth now.

It was sometime after this when I suggested that Mr. Willis make plans o move to Oneida, as he had promised me he would do when I hired him, to be closer to his work, that on a Monday morning the first of May, 1962, he informed me in my office that he was turning in a two-week notice, that he had agreed to take a similar job at WHBT in Harriman in two weeks and would leave me at that time. He stated to me before he left the office at that time, and these were his exact words: "I want you to know that I did not contact them regarding this job...they called me."

Again, I brand Mr. Willis's statement a complete falsehood.

Walter H. Scarbrough

Walter H. Scarbrough

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from the origina

STATE OF TENNESSEE

SCOTT COUNTY

Personally appeared before me, Ted Q. Wilson, Notary Public, in and for said state and county the aforesigned, Walter H. Scarbrough, with whom I am personally acquainted and who, after being duly sworn, made oath that the foregoing statement was freely made by him; and that the facts and things stated therein are true and correct to the best of his knowledge and belief; and that those facts and statements made on information, he verily believes to be true.

This the 31st day of December, 1962.

Ted Q. Wilson, Notary Public

My Commission Expires September 18, 1966.

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ATTACHMENT NO. 10

Folkways Broadcasting Co., Inc.
P. O. Box 221
Harriman, Tennessee
Phone 882-1600

RADIO STATION WHBT

(Established 1947)
Independent

Rate Card No. 4
Issued-November 1, 1961
Effective-November 1, 1961

1—PERSONNEL

a. Kenneth J. Crosthwait-President & Gen. Mgr.
William R. Carrigan -Vice President
Grant E. Roberts -Station Manager

2—REPRESENTATIVES

a. David Carpenter & Co.
216 Mercantile Bldg. Phone 525-1602
Knoxville 2, Tenn.
Member: Radio East Tennessee Group

3—MAILING INSTRUCTIONS AND CLOSING TIMES

a. Business Office and Studio-P. O. Box 221
Harriman, Tennessee-Phone 882-1600

4—FACILITIES

a. 5000 watts
b. 1600 kilocycles - non-directional
c. Licensed to operate to local sunset Eastern Standard Time - Daylight saving time not observed.
d. Transmitter located on S. Margrave St.

5—COMMISSION AND CASH DISCOUNT

a. 15% to recognized agencies on net charges for station time. No commission on line charges.
b. No cash discount allowed
c. Bills rendered monthly payable the 15th of month following broadcast.

6—RATE POLICIES

a. Rate protection honored only by contract or agreement.
b. Frequency discount allowed as earned.

7—RATES—ANNOUNCEMENTS

Times	1 Min.	30 Sec.
1 time	5.89	5.30
52 times	4.71	4.12
156 times	4.12	3.53
260 times	3.53	2.95
500 times	2.95	2.36
1000 times	2.53	2.06

8—RATES—PACKAGE PLANS

a. The following package plan is for Weekly Saturation ONLY — advertising MUST be used within a consecutive 7 day period.

Times	1 Min.	30 Sec.
Up to 29	2.95	2.36
30 to 39	2.65	2.18
40 to 59	2.53	2.06
60 to 79	2.36	1.89
80 to 99	2.18	1.71
100 & Over	1.95	1.48

RADIO STATION WLIV

LIVINGSTON, TENNESSEE

920 KILOCYCLES — 1000 WATTS

RATE CARD NO I

EFFECTIVE NOVEMBER 1, 1956

GENERAL BROADCASTING

NO. TIMES	60 MIN.	30 MIN.	15 MIN.	10 MIN.	5 MIN.	1 MIN
1	$30.00	$18.00	$12.00	$9.00	$6.00	$3.00
13	28.50	17.10	11.40	8.55	5.70	2.85
26	27.00	16.20	10.80	8.10	5.40	2.70
39	25.50	15.30	10.20	7.65	5.10	2.55
52	24.00	14.40	9.60	7.20	4.80	2.40
78	22.50	13.50	9.00	6.75	4.50	2.25
104	21.00	12.60	8.40	6.30	4.20	2.10
156	19.50	11.70	7.80	5.85	3.90	1.95
260	18.00	10.80	7.20	5.40	3.60	1.80
312	16.50	9.90	6.60	4.95	3.30	1.65

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ATTACHMENT NO. 11

EVEN-UP BOTTLING COMPANY

PHONE 206

NORTH CHURCH STREET
LIVINGSTON, TENNESSEE

Proposed Annual operating expenses for radio station in Harriman, Tennessee

2 Announcers	@ 65.00 per week 3380.00 (each)	$6760.00	
1 "	(part time)	2000.00	
1 Engineer	*75 per wk.	3900.00	
1 Secretery		2600.00	
1 Salesman		5200.00	
Station Manager		5200.00	$25,660.00
UPI News Service		2156.96	
Rent		900.00	
Utilities		1000.00	
Records & Transcriptions		1500.00	
Line & Telephone Charges		2500.00	
Advertising		1000.00	
Insurance		500.00	
Royalties	(~~Record Companies~~) BmI, ascap etc	500.00	
Social Security & Unemployment Comp.		1000.00	
Office Supplies		1000.00	
Miscellaneous		4283.04	$16,340.00
Total..................................			$42,000.00

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HARRIMAN BROADCASTING CO.
STATION WHBT ATTACHMENT NO. 12
DECEMBER 31, 1955

STATEMENT OF INCOME AND EXPENSE

Balance on Hand 1/1/55			$ 2,662.10
Receipts			73,818.89
			$76,480.99
DISBURSEMENT:			
Broadcasting Supplies		1,293.55	
Office Supplies		385.01	
Dues		3,114.86	
Transcription Service		2,743.66	
Advertising		168.88	
United Press Service		1,867.10	
Salaries		20,428.22	
Commissions		7,821.26	
Remote Fees		72.50	
Taxes		3,235.78	
Telephone Service		1,075.92	
Remote Lines		1,490.74	
Freight and Cartage		153.36	
Mutual		900.00	
Utilities		1,067.73	
Talent		1,625.28	
Rent		1,800.00	
Miscellaneous		362.19	
Legal Fee		250.00	
Consultant Engineer		449.63	
Insurance		263.58	
Accountant		82.50	
Employee Bonus		380.00	51,031.75
Equipment		4,642.73	
Land for Station WDEH		2,000.00	
Withdrawals	12,800.00		
Withdrawals to Balance	1,764.85	14,564.85	21,207.58
BALANCE ON HAND 12/31/55			$ 4,241.66

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ATTACHMENT
NO. 13

HARRIMAN BROADCASTING CO.
STATION WHBT

PROFIT AND LOSS STATEMENT - 1955

Receipts	$73,818.89	
Decrease in Accounts Receivable	(437.30)	
Decrease in Accounts Payable	3,707.72	
		$77,089.31
Expenses from Income and Expense Statement		51,031.75
		26,057.56
Less Depreciation Expense		7,966.85
NET PROFIT		$18,090.71

BALANCE SHEET
DECEMBER 31, 1955

ASSETS:

Cash in Bank	$ 4,241.66
Land	450.00
Broadcasting Equipment	46,757.27
Office Equipment	2,975.30
Transmitter Building	2,920.13
Accounts Receivable	6,135.65
Total Assets	$63,480.01

LIABILITIES AND NET WORTH:

Accounts Payable			$ 163.79
Reserve for Depreciation			34,452.76
Capital from Corporation 1/1/55		34,799.67	
Profit for Year 1955		18,090.71	
		52,890.38	
Personal Withdrawals	14,564.85		
Transfer of Land to WDEH	2,000.00		
Note of WDEH	7,462.07	24,026.92	
Capital Account 12/31/55			28,863.46
Total Liabilities and Net Worth			$63,480.01

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ATTACHMENT NO. 14

STATEMENT

of

Walter H. Scarbrough

Mr. Freeman L. Crowder and I have known each other closely since the latter part of the 1940's and I have worked with and for him since he firs began his radio work in 1947 in Harriman. I served as his commercial manager of Radio Station WHBT in Harriman from May, 1950, until he sold his interest in the station in 1956 (with a short time out for military service). During this time we were very closely associated in business of the station, working closely to pull the station from a slow start to a prosperous business, sharing and discussing ideas, and tackling problems.

Sometime after the sale of WHBT by Mr. Crowder to Ernest Tubb, Hank Snow and associates, he mentioned to me that many of the business people in Harriman told him they were dissatisfied with the service of WHBT under the new ownership and were trying to persuade him to apply for another radio station in Harriman. At that time he told me the business people had been good to him when he had the station and he would like to try to help them out but he didn't think it would be right to sell his station, and while holding a note against it to go into competition with it. Several times in later months this subject came up in conversation between Mr. Crowder and myself and in the meantime several businessmen of Harriman asked me if I couldn't do something about getting another station so they could have better programming and advertising rates which they could affor I was not financially in a position to proceed with any such undertaking. I do know personally that another party who had knowledge of the feelings of these businessmen checked for an available frequency in Harriman and dropped their attempt when they thought a frequency was unavailable.

Thus when Mr. Crowder talked seriously early in 1961 about applying for a new CP for Harriman, I assured him that because of our previous radio relationship and my knowledge of his method of operation that I would be happy to give him any aid I could although I was also busy with my work in another station. Because of our personal close relationship the subject invariably came up every time either visited with the other and thus I felt that I knew as much about what he wanted to do with a new station as he himself did. It was with this knowledge that I agreed to spend a little of my spare time in contacting a few of the leading citizens of Harriman with whom I was well acquainted and convey to them his ideas on programming and outline some of the plans as he had given them to me, as pertaining to the proposed new station.

On EVERY contact which I made in his name, I explained to the person with whom I was talking that I was helping Mr. Crowder in his preparation of material for inclusion in an application to the Commission for a CP. I explained to each that I was NOT attempting to get an endorsement favorable to a grant by the Commission of the requested CP, nor was I attempting to get any expression of dissatisfaction with the present radio station in Harriman. I attempted to make it clear to each that there was absolutely no pressure or obligation of any kind and if they could not freely make a statement that they had been contacted and had talked about proposed programming plans of the proposed new station then that would be the end of the situation insofar as they were concerned and they would still be included in the plans as outlined if and when the new CP was granted. It was pointed out to each that their statement was desired ONLY to substantiate the fact that they had been contacted about the planned programming as it was felt by Mr. Crowder and his attorney that the Commission would desire this information. At the slightest reticence of any person contacted to make a statement the request was immediately dropped. Several leading citizens were contacted by me during this time and plans discussed, although I did not even ask them to make a statement. Although civic and community

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club leaders were contacted, NOT A SINGLE PERSON WAS ASKED TO SPEAK FOR HIS GROUP, but only as an individual, unless the matter were taken up and official approval of the group's governing board was given, although this action was not requested. I explained to each that it was not the intent of Mr. Crowder to obtain statements that were critical of any cooperation or lack of same by the present station in Harriman.

Knowing the persons contacted by me, and realizing the natural questi of most people in similar situations, I jotted down some representative ideas that might be included by each in making a statement. This was not done with the idea of writing a statement and just asking them to put thei signature on it. And the ideas I carried with me were not given to the person being contacted until they asked: "What should I write, or how should I express it?" I then told them that I had written out a sample of what they might want to say but that they were not bound by these suggestions and were completely free to rewrite the statement, taking out or adding anything they desired or to discard these ideas entirely if they did not meet with their approval. In ALL cases the suggested statement was changed before the final letter was submitted, by mail from the individual citizen and not read by me, to Mr. Crowder for submission with his application.

Without exception, those citizens I contacted expressed appreciation for the consideration of talking with them and also including their group' activities in the plans, and each expressed a complete willingness to make a statement to substantiate our discussion.

Walter H. Scarbrough
Walter H. Scarbrough

BEST COPY
from the origina

STATE OF TENNESSEE

SCOTT COUNTY

Personally appeared before me, Ted Q. Wilson, Notary Public, in and for said state and county the aforesigned, Walter H. Scarbrough, with whom I am personally acquainted and who, after being duly sworn, made oath that the foregoing statement was freely made by him; and that the facts and things stated therein are true and correct to the best of his knowledge and belief; and that those facts and statements made on information, he verily believes to be true.

This the 31st day of December, 1962.

Ted Q. Wilson, Notary Public

My Commission Expires September 18, 1966.

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AFFIDAVIT

I, F. L. Crowder, being first duly sworn do hereby depose and state as follows:

1. That trading under the name of Harriman Broadcasting Co., I have filed with the Federal Communications Commission an application (File No. BP 15122) for a construction permit for a new standard broadcast station to be operated on the frequency 970 kc with 500 watts power daytime only in Harriman, Tennessee.

2. That I have read the information contained in the several petitions to deny directed against my application.

3. That I have read the information contained in the foregoing Opposition to Petition to Deny and that the information contained therein is true and correct to the best of my knowledge and belief and that where indicated the information is based on my own knowledge and experience in radio broadcasting and in the Harriman, Tennessee, market.

Dated this 3rd day of January, 1963.

F. L. Crowder
/s/ F. L. Crowder
F. L. Crowder

Subscribed and sworn to before me this 3rd day of January, 1963.

[SEAL]

My commission expires________.
My Commission Expires Nov. 14, 1963

Dorothy J. Groves
Notary Public

CERTIFICATE OF SERVICE

I, JoAnne Peters, a secretary at the law firm of Smith & Pepper, do hereby certify that I mailed, this 8th day of January, 1963, postage prepaid, a copy of this "Opposition to Petition to Deny Filed by Folkways Broadcasting Company, Inc.", to each of the following:

Arthur H. Schroeder, Esq.
John B. Kenkel, Esq.
Miller & Schroeder
218 Munsey Building
Washington 4, D.C.

Counsel for Folkways Broadcasting Company, Inc.

Kenneth Cox, Esq.
Chief, Broadcast Bureau
Federal Communications Commission
Washington 25, D.C.

JoAnne Peters
/s/ JoAnne Peters
JoAnne Peters

RECEIVED
JAN 8 1963
F.C.C.
OFFICE OF THE SECRETARY

NEVILLE MILLER
ARTHUR H. SCHROEDER
JOHN B. KENKEL
JOHN P. BANKSON, JR.

PHONE: METROPOLITAN 8-2193

LAW OFFICES
MILLER & SCHROEDER
MUNSEY BUILDING
WASHINGTON 4, D. C.

RECEIVED
OCT 12 1964
F. C. C.
OFFICE OF THE SECRETARY

October 12, 1964

RECEIVED
OCT 13 1964
CHIEF, HEARING DIVISION

Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Sir:

On behalf of Folkways Broadcasting Co., Inc., licensee of station WHBT, Harriman, Tennessee, there is filed herewith original and nineteen copies of "Amendment to Petition to Deny" (re File No. BP-15122).

Very truly yours,

JOHN P. BANKSON, JR.

Enclosures

JPB:kac

ORIGINAL

RECEIVED
Oct 12 1964
F.C.C.
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)
)
F.L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY) File No. BP-15122 ✓
Harriman, Tennessee)
)
Before: The Commission)

~~Mr Fitzpatrick (10)~~
Asst H (B/c)
Orig + 19
10-12-64

RECEIVED
OCT 13 1964
CHIEF, HEARING DIVISION

AMENDMENT TO PETITION TO DENY

Comes now FOLKWAYS BROADCASTING CO., INC., licensee of station WHBT, Harriman, Tennessee, by its attorneys, and files an amendment to its petition to deny the above-captioned application heretofore filed with the Commission on December 10, 1962. This amendment is being submitted pursuant to the Commission's letter of August 13, 1964 (Reference No. 8831) in order to provide insofar as possible the information specified in the attachment thereto.

I. RESPONSES TO SPECIFIC CATEGORIES OF INFORMATION REQUESTED BY THE COMMISSION

1. In its letter of August 13, 1964, the Commission has requested information in twelve numbered categories based on the order in Missouri-Illinois Broadcasting Co. (KZIM) released August 4, 1964 (FCC 64-748, Mimeo. 54293). For convenience, the same numbering is followed below.

1. Total Retail Sales And Unusual Economic Conditions In The Area.

2. Separate retail sales for Harriman, Tennessee, are not available from any source known to WHBT; however, the Sales Management Survey of Buying Power, a recognized source for estimates of retail sales, does make estimates of retail sales for Roane County in which WHBT and another standard broadcast station, WRKH, Rockwood, Tennessee, are located. For the most recent three years estimated by Sales Management for Roane County the retail sales are as follows:

	Retail Sales
1961	$29,173,000
1962	$31,257,000
1963	$31,857,000

3. The foregoing data demonstrate a very small economic base indeed, particularly since retail sales are an accepted indicator of the amount of revenue available for broadcast station advertising. The very small total of retail sales is now available to two standard broadcast stations when it is insufficient for one, and to divide further the total among three stations would prevent any or all of them from carrying out the present level of public service available on two stations.

4. Harriman is located in Roane County, which was found by the Tennessee Department of Employment Security in 1961 to be a "small labor market area with substantial and persistent unemployment". Details

concerning this situation are set forth in the original petition to deny, paragraphs 4, et seq. Furthermore, Harriman is located approximately twelve miles west and south of Oak Ridge, Tennessee, whose largest employers are the subcontractors of the United States in connection with Atomic Energy Commission activities. There has been a continual reduction in production of fissionable material amounting to a 25% reduction announced in 1961 and completed by July 1, 1964, a further 25% reduction during fiscal 1965, which was announced by President Johnson in his State of the Union Message on January 8, 1964, and, furthermore, further cuts are proposed even though two of the major facilities, Buildings K-25 and K-27 are shut down and on stand-by basis. It is anticipated that within the next few years production will be 40% below the reduced levels attained on July 1, 1964. All of these reductions affect the economy of Harriman

and Roane County, as well as Oak Ridge, because Oak Ridge atomic operations are located partially in Roane County and partially in Anderson County.

2. Total Number Of Businesses In Community And Area.

5. As best WHBT can estimate, based on its own knowledge, information obtained from the city and county governments and telephone and power connections, there are approximately 750 businesses in Harriman and the surrounding area. Numerous of these businesses are small, sole proprietorships, so-called "Mom and Dad operations", and at the very most 400 to 425 are potential advertisers. Of these, many do not advertise because they are chain stores without a local advertising budget. Station WHBT

carries as few as 75 local accounts and as many as 150 accounts (Christmas time) monthly, and the average is approximately 100 to 125 accounts a month. Over the last two years 278 local advertisers have used WHBT.

3. Total Advertising Revenue Potential.

6. Information concerning this matter was set forth in the original petition to deny filed by WHBT, and the estimates of total retail sales given above indicate that there has been only a slight change in the last two years, insufficient improvement to justify the allocation of a third radio station to this very small county in an economically deprived and declining area.

4. Local Advertising Revenue Earned.

7. In 1963, WHBT had revenues from sale of station time to local advertisers of $80,476. This represents an improvement over the 1962 figure of $78,494 and the 1961 figure of $65,019. However, as will be seen below under Item 5, these additional revenues have been used to improve the operation by increasing expenses in order to provide a better service in the public interest. WHBT for all three years operated on a loss basis.

5. Revenues, Expenses And Profit Or Loss For The Last Three Years.

8. Set forth below in tabular form is data from WHBT's annual financial reports for the last three years for broadcast revenue, broadcast expenses, losses and the number of employees:

	Revenues	Expenses	(Loss)	Employees
1961	76,082.00	78,367.00	(2,285.00)	8 full time 1 part time
1962	94,845.00	96,159.00	(1,314.00)	8 full time 1 part time
1963	88,650.00	90,177.00	(1,527.00)	8 full time 1 part time

6. How Many Businesses Do Not Advertise.

9. This question has been responded to under Item 2 above.

7. Advertisers Who Will Shift Their Advertising.

10. Conversations with various advertisers of WHBT have produced no specific indication of how many advertisers will shift to the new station. WHBT cannot speculate on such a contingency either. We do know, however, that the advertisers will be forced to do one or more of the following things:

a. Increase their advertising budget which all have said is impossible,

b. Scatter their present budget thinner among all media, thereby reducing the effectiveness of their advertising dollar,

c. Transfer their radio budget to other media, thereby losing the benefit of advertising that only radio can produce,

d. Some advertisers have said that their budget was now divided to the point of no return already among media. Another split would force them from the advertising field with disastrous results to them and to the public interest.

8. Other Competing Media.

11. The other competing media are set forth in the original petition to deny filed by WHBT.

9. Loss Or Degradation Of Program Service.

12. This item was fully discussed in the original petition to deny, particularly Paragraphs 13 through 21. In further amplification of our response to this section, WHBT broadcast 268 public service spot announcements during the last composite week. The principal difficulty that would be faced by WHBT in the event of a reduction of revenue is the necessity to reduce expenses, and station staff is one of the principal places where this can be accomplished. If the staff must be cut, the time for additional duties, such as moving remote equipment to the Roane County fair and cooperation with schools and civic groups to help with their many civic campaigns, and the efforts of station personnel to help promote the city and county would have to be curtailed.

13. Furthermore, if Mr. Crowder carries through with his threatened rate-cutting policy as detailed in our petition to deny, WHBT would be forced to have more commercials in order to survive, and this would reduce the time available for public service spot announcements. At the present time the total amount of public service programming occupies approximately 24.39% of the broadcast day based on the most recent composite week. Because we are a daytime station with only one rate, it

would not make any great deal of difference to shift public service and spot announcements from an operational standpoint, but it might deprive many listeners of the programs depending on their listening hours.

10. Proposed Public Service Programming Of The New Station.

14. WHBT has no information that the public service programming proposed will not be carried out by the captioned applicant.

11. Substantial Changes in WHBT.

15. A grant of the proposed station would result in substantial changes in the WHBT program format policies because this policy has been based on a decision to employ and keep competent employees by paying them a living wage and providing them additional time for planned programming, planned for the best interests of all the public in the community, the advertiser, and the station. Elimination of any of these personnel would necessarily result in a degradation of programming service to the community.

12. Additional Information.

16. WHBT has no specific additional information to submit. However, it does wish to state the number of advertising dollars available in any community is regulated and is directly proportional to the retail sales in the community. The economics of broadcasting are no different from that of any other business and that to do the best job requires the best efforts, competent personnel, and complete planning.

The market is small and depressed, retail sales are small, and therefore another split in the advertising dollar can only result in degrading total radio service to the community, not only from WHBT but from the other existing station WRKH, Rockwood, Tennessee. There is also no assurance that the new station would be able to secure sufficient revenue to replace any of the services lost because of the dividing of the potential three ways.

Consequently, it is again requested that the above-captioned application be denied or designated for hearing on the issues heretofore specified, making WHBT a party to such hearing.

Respectfully submitted,

FOLKWAYS BROADCASTING CO., INC. (WHBT)

By: MILLER & SCHROEDER
Its Attorneys

/s/ Arthur H. Schroeder
ARTHUR H. SCHROEDER

John P. Bankson, Jr.
/s/ John P. Bankson, Jr.
JOHN P. BANKSON, JR.

808 Munsey Building
Washington, D.C. 20004

October 12, 1964

CERTIFICATE OF SERVICE

I, Catherine L. MacKinnon, hereby certify that I have this 12th day of October, 1964, sent by first class United States mail, postage prepaid, a copy of the foregoing to the following:

Vincent A. Pepper, Esquire
Robert F. Corazzini, Esquire
714 Perpetual Building
Washington, D.C. 20004
Counsel for Harriman Broadcasting Co.

Mr. Richard W. Holloway
Radio Station WRKH
Rockwood, Tennessee

Mr. Harry T. Burn
President, First National Bank and Trust Company
Rockwood, Tennessee

James B. Sheridan, Esquire
Chief, Broadcast Bureau
Federal Communications Commission
Washington, D.C. 20554

Catherine L. MacKinnon

/s/ Catherine L. MacKinnon
CATHERINE L. MacKINNON

COUNTY OF ROANE)
) SS.
STATE OF TENNESSEE)

AFFIDAVIT

GRANT E. ROBERTS, being duly sworn upon his oath, deposes and says that he is treasurer and a director and stockholder of Folkways Broadcasting Co., Inc. and the station manager of radio station WHBT, Harriman, Tennessee, licensed to Folkways Broadcasting Co., Inc., that he has read the foregoing amendment to petition to deny prepared on behalf of Folkways Broadcasting Co., Inc. that the facts therein stated, unless otherwise attributed to recognized sources, are true and correct based on his own personal knowledge and information, that those facts attributed to recognized sources are believed by him to be true and correct, that he has re-examined the previous petition to deny filed by Folkways Broadcasting Co., Inc. and the reply by Folkways Broadcasting Co., Inc. to the opposition to petition to deny filed January 28, 1963, and that based on events occurring since that time he knows of no developments which would change the original conclusion that there is not a sufficient economic base to support an additional radio station in Harriman, Tennessee, and/or Roane County, Tennessee.

Grant E Roberts
GRANT E. ROBERTS

Subscribed and sworn to before me this 10th day of October, 1964.

(SEAL)

NOTARY PUBLIC

My Commission expires 3-4-68.

290

SMITH & PEPPER
ATTORNEYS AT LAW
1101 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

E. STRATFORD SMITH
VINCENT A. PEPPER
JOHN P. COLE, JR.
THOMAS G. SHACK, JR.
THOMAS W. FLETCHER
ROBERT F. CORAZZINI
ROBERT W. HEALY
DONALD E. BILGER

TELEPHONE
296-0600

RECEIVED
Nov 6 1964
F. C. C.
OFFICE OF THE SECRETARY

November 6, 1964

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Waple:

Enclosed herewith are the original and nineteen copies of an "Opposition to Amendment to Petition to Deny", filed on behalf of F.L. Crowder, tr/as Harriman Broadcasting Company, Harriman, Tennessee in connection with File No. BP-15122.

Should any further information be desired in connection with this matter, please communicate with this office.

Very truly yours,

Donald E. Bilger

Donald E. Bilger

Enclosures (20)

ORIGINAL

RECEIVED
Nov 6 1964 29
F.C.C.
OFFICE OF THE SECRETAR

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY) File No. BP-15122
Harriman, Tennessee) Miss. Diehl ⑪
) List A. BIC
For Construction Permit) Orig + 20. 11-6-64

OPPOSITION TO AMENDMENT TO PETITION TO DENY

(For Action By The Commission)

Comes now F.L. Crowder, tr/as Harriman Broadcasting Company, applicant for a new standard broadcast station at Harriman, Tennessee, by his attorneys, and submits his Opposition to an Amendment to Petition to Deny filed with the Commission on October 12, 1964, by Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, stating in support thereof as follows:

Preliminary Statement

1. On October 4, 1961, F. L. Crowder, tr/as Harriman Broadcasting Company, filed with the Commission an application for authority to construct a new standard broadcast station on 970 kc with 500 w power, daytime, in Harriman, Tennessee. On December 10, 1962, The First National Bank and Trust Company of Rockwood, Tenness Richard W. Holloway, tr/as Dick Holloway Enterprises, licensee of Station WRKH, Rockwood, Tennessee, and Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, all filed Petitions to Deny. On January 8, 1963, Oppositions to the three aforesaid Petitions were filed, and on January 28, 1963, Folkways Broadcasting

Company, Inc., filed a Reply.

2. By letters dated August 13, 1964, directed to Folkways Broadcasting Company, Inc., and to Richard W. Holloway, tr/as Dick Holloway Enterprises, the Commission provided the addressees opportunities to supply additional economic data in support of their respective Petitions to Deny, specifically setting forth eleven questions to be fully answered together with a request for any other information related to the economics of broadcasting. Amendments were required to be filed within sixty days of August 13, 1964, with copies to be supplied to the applicant. The applicant was permitted to file opposition data within fifteen days after receipt of any such amendments.

3. On October 12, 1964, Folkways Broadcasting Company, Inc.,[1] filed an Amendment to its Petition to Deny wherein it purported to supply answers to the questions propounded by the Commission in its letter of August 13, 1964. Since the applicant has not received a copy of an amendment from Richard W. Holloway, tr/as Dick Holloway Enterprises, presumably that petitioner did not choose to reply to the aforesaid Commission communication.

4. In its amendment, Folkways has sought to bolster its Petition to Deny by reliance upon what it has already filed, by offering speculation and conclusions unsupported by any factual base or indication of identifiable source material, and by revealing limited revenue and expense data pertinent to its own station. In short,

---

[1] Petitioner's corporate title was identified in its Petition to Deny as "Folkways Broadcasting Company, Inc.", although in both its Reply to the Opposition to its petition and in its amendment the corporate title is "Folkways Broadcasting Co., Inc."

comparison of the questions asked with Folkways' responses thereto not only reveals a paucity of new information, none of which warrants either a denial of the instant application or a hearing on the matter, but also discloses indicia of an increasingly healthy economy in Roane County which has resulted in a steady and meaningful improvement for the past three years in the revenue realized by Folkways from local time sales.

Question 1

> "What is the total amount of retail sales in the community and the area for the preceeding three years? If sales are in a decreasing pattern, set forth the reasons which should include information as to any unusual economic conditions in the area."

5. To this question Folkways answered that it was unable to obtain such information as to Harriman, the community wherein the applicant proposes to construct and to operate the facility he seeks, but that as to Roane County retail sales had increased from $29,173,000 in 1961 to $31,257,000 in 1962 and to $31,857,000 in 1963. Apparently in recognition that such a disclosure does not help its cause, Folkways state that a 25% reduction has occurred in the production of fissionable material at Oak Ridge and then forecasts that "within the next few years production will be 40% below the reduced levels attained on July 1, 1964". Although the Oak Ridge atomic operations are not even entirely located within Roane County, Folkways then concludes sans factual support with the generalization that "All of these reductions affect the economy of Harriman...".

6. The fact is, however, that even taking at face value the bare conclusions offered by Folkways in response to this question indicates that a reduction in Oak Ridge

operations results in an increase during that same period of time of more than 9% in county retail sales and an increase of almost 24% in the local time sales of its Harriman station. In fairness to Folkways, it must be noted that its Petition to Deny and its Reply to the Opposition to Petition to Deny speak in terms of 1960 and preceeding years, not to the rising economy of Roane County and the increasing prosperity of WHBT for the past three years. Nonetheless, since 1961 Folkways has increased by more than $25,000 per year its sales of station time to local advertisers. (See Question 4, ante). A more reliable indication of local broadcast economics could scarcely be found.

Question 2

> "What is the total number of businesses in the community and the area?"

7. To this Folkways estimated 750. Although it had to estimate the total number, Folkways was able to flatly state without qualification that of the 750 numerous are "small, sole proprietorships" and at the very most the total potential advertisers would not exceed 400 to 425. No explanation is offered as to the method used by Folkways to arrive at its potential advertiser figures, but assuming again the validity thereof Folkways is realizing only about 25% of the potential. It admits that its monthly average of local accounts is approximately 100 to 125, with a low of 75 and a Christmas maximum of 150. These statistics can hardly be said to support Folkways' basic premise in Paragraph 8 of its Petition to Deny that all available revenues have been exhausted. Rather, they lend additional credence to the suspicion that Folkways' rates are or were excessively high or that public acceptance of its facility is or was not of the highest

order, or both. Within the past three years those "exhausted" revenues have increased quite significantly. For example, total revenue of WHBT has increased more than 16% and local revenue has increased almost 24%. Retail sales, a reliable economy indicator according to Folkways, have increased more than 9%.

Question 3

> "What is the total advertising revenue potential in the community and the area?"

8. Folkways refers the Commission to its Petition to Deny, declining to supply additional or more current information in response to this Commission inquiry. Folkways does, however, characterize the more than 9% rise in retail sales of Roane County since 1961 as "a slight change" insufficient to justify a grant of the instant application.

9. Reference to the Folkways Petition indicates that the only mention of anything which could be interpreted as a response to this question occurs in Paragraph 10. Therein, Mr. Kenneth J. Crosthwait, President and the majority stockholder of Folkways, "estimates that considering the competitive media picture with the economic conditions prevailing in Roane County, the maximum potential revenues for Roane County stations in their market area are approximately $125,000 a year, with two stations operating in the county". He also "estimates that the available radio revenues would decrease to approximately $85,000" if a third station is assigned. Nowhere are the predicates for Mr. Crosthwait's estimates revealed, Folkways merely attributing their reliability to Mr. Crosthwait's broadcast "experience". Hence, the Commission's inquiry as to revenue potential in Harriman and its environs is left unanswered except

for a self-serving opinion promulgated by a patently biased party. It can look for an answer, however, to the substantial increase in local time sales enjoyed by Folkways' station during the past three years, as well as to Folkways' admission that it now serves only about one-fourth of the potential advertisers in its service area.

Question 4

> "What is the amount of local advertising revenue actually earned by our (sic) station in the community and the area?"

10. Folkways' answer to this is revealing indeed. In 1961, its local advertising revenue was $65,019; in 1962, it rose to $78,494; and in 1963, it again increased to $80,476. Thus, no matter what the Folkways' argument is with respect to the general economy of Harriman and Roane County the fact remains that in 1963 it sold to local customers in excess of $25,000 more advertising than it sold locally in 1961. This represents an increase of almost 24% in an area of perhaps more decisional significance than any other with respect to an economic injury allegation such as that raised by Folkways, and no attempt to minimize its import by alleging a concomitant increase in expenses detracts from its particular importance. Folkways tries however. It alleges that the increased local revenues, which amount, incidentally, to more than one-third of its total broadcast revenues in 1961, were used to "improve the operation by increasing expenses". Of peculiar interest is the failure of Folkways to inform the Commission as to the amount or the nature of the improvement, a lapse highlighted in Folkways' answer to the next question.

Question 5

> "Set forth, for at least the three preceding years, your total revenues, total expenses, net profit or loss and the

average number of employees?"

11. Folkways provided the minimum information requested, and limited it to the last three years. Its expenses exceeded its revenues by $2285 (about 3%) in 1961; by $1314 (about 1%) in 1962; and by $1527 (about 1-1/2%) in 1963. Its staff of 8 fulltime and 1 parttime employees remained unchanged throughout the period.

12. Folkways did not amplify any of the statistical data it supplied in response to this question. It made no effort, for example, to explain its accounting system, to supply a financial statement which would reveal the nature of its "expenses" or to disclaim the likelihood that its staff, including stockholders, was enjoying undue salary and draw increases. On balance, its answer here creates a suspicion that its accounting system and schedule of employee remuneration which result in a continual paper loss year after year are designed more to take full advantage of corporate tax structures than to reflect an accurate picture of local broadcast revenue possibilities. One thing is certain, however, The almost 24% increase in local revenues and the more than 16% increase in total revenues realized over the period from 1961 to 1963 occurred without need to augment the 1961 staff. In view of this fact, it would seem that a bit more effort has produced rather phenomenal results or that the local economy is growing so rapidly that no such extra energy was needed, or both.

Question 6

> "How many of the existing businesses in the community and the area do not now advertise on the radio?"

13. Folkways stated that it had answered this question in its response to Question 2. It will be recalled that it estimated there that Harriman and the surrounding

area had some 750 businesses out of which 400 to 425 were potential advertisers. Of this amount, WHBT averaged monthly some 100 to 125 accounts with a low of 75 per month and a Christmas high of 150. Over the past two years, according to Folkways, 278 local advertisers have used WHBT. In other words, Folkways manages to sell only about one-fourth of its local potential even though it is the only broadcast station assigned to Harriman.

Question 7

> "State, in detail, the specific advertisers that would shift their advertising to the proposed station. How many advertisers will split their advertising time between the existing station or stations and the proposed station?"

14. Folkways states that it has had "conversations with various advertisers of WHBT" about the matters posed in this question, but that it has "no specific indication of how many advertisers will shift to the new station". In other words, Folkways is not only unable to supply the detailed information requested, but it has chosen not to reveal even the number of its advertisers contacted or the amounts of advertising time represented by them.

15. Folkways also has disclaimed any intention to speculate by stating that "WHBT cannot speculate on such a contingency (possible advertiser shifts or time splits) either", and then promptly proceeds to do so. Thusly, it lists four possible choices open to present advertisers upon the stated premise that one or more of the four must be selected. The choices are not all encompassing however. Folkways ignores, for example, the possibility that current advertising budgets now placed with media other than broadcasting might be placed with the proposed station. Nor does the Folkway premise

consider the possibility that some of the 300 potential advertisers who do not now use WHBT, which represents about 3/4 of the market according to Folkways, might advertise with the proposed station.

16. Finally, Folkways indicates that all of its present advertisers have said they cannot increase their advertising budgets, and that some of them have said that "their budget was now divided to the point of no return already among media". From the latter point, Folkways then reasons that "Another split would force them from the advertising field...". The premise prima facie does not beget the conclusion. What is worse, perhaps, is the conspicuous lack of a checkable base for the disasters predicted by Folkways. There is nothing to indicate, for example, whether Folkways use of such terms as "various advertisers" and "some advertisers" means two, ten, fifty, or one hundred. Also left unexplained is the dollar value of the advertising accounts which might allegedly be affected. Hence, Folkways could have discussed the matters raised by this question with three advertisers whose total monthly advertising budget is $150, and used such conversations as a technically accurate predicate for its general terminology. The point simply is that the Commission has no way of knowing these highly important factors from the Folkways pleading. In short, the posed question has not been answered even in generic terms, much less answered in detail as the Commission requested.

Question 8

> "What are the other competing advertising media in the community and the area?"

17. Folkways indicates that the answer to this question can be found in its Petition to Deny. Reference to that pleading at Paragraph 9 discloses that three weekly

papers are published in Roane County,[2] and that there is some "outdoor advertising and direct mail advertising". Additionally, Folkways mentions without identification newspapers and radio stations located in Knoxville and Chattanooga. Nothing in this regard specifically refers to Harriman.

Question 9

> "State, in detail, how a grant of this proposal would cause a net loss or degradation of program service to the area.
>
> a) What public service programs do you now broadcast?
>
> b) How many public service spot announcements do you broadcast each week?
>
> c) What public service programs would have to be discontinued? Spot announcements?
>
> d) What public service programs will have to be shifted to other time segments? Spot announcements?
>
> e) As to (c) and (d) what percentage of the total broadcast time is represented by the public service programming?
>
> f) What is the cost of carrying these programs and what saving will be effected in dropping or shifting this programming? What is the cost of carrying the public service spot announcements and what saving will be effected in dropping or shifting spot announcements? What programming personnel changes will be required?"

18. Folkways refers the Commission to its Petition to Deny, particularly to Paragraphs 13 through 21. Examination of that document indicates that in Paragraph 16

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[2] There is a standard broadcast station located in Rockwood, Roane County, Tennessee, licensed to Richard W. Holloway, tr/as Dick Holloway Enterprises. As noted supra, it filed a Petition to Deny but has failed to pursue it.

Folkways lists four programs which it seems to classify as public service -- Your Social Security Reporter, Roane County Chamber of Commerce, Child Care, and Civil Defense. Of the four, one occurs once a year and two apparently occur or have occurred upon a non-regular basis. The fourth, Your Social Security Reporter, is alleged to be carried regularly, but the length of each program is not disclosed. Some reference is made to a 15-minute program on Sunday, but it is not identified by title. Paragraph 17 mentions some five religious and discussion programs, but it is doubtful that any of these can rightfully qualify as public service.

19. In its amendment, Folkways states that during the last composite week it broadcast 268 public service spot announcements. Nothing has been found in its earlier pleadings to supplement this data.

20. Folkways does not identify any particular program or spot announcement which would be discontinued should the instant application be granted.[3] It contents itself with such statements as "As examples of the programs and services which the community of Harriman would lose if WHBT was forced to cease operations, or which would be lost to a significant degree if WHBT were required to reduce its staff and effectuate other economies to meet the Crowder competition...", citing the four programs identified supra in Paragraph 18 hereof, and "The assignment of a second station in Harriman would cause, as above indicated, significant reduction or destructio

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[3] Two commercially sponsored programs, "Swap Shop" and "H. G. Community Program" are listed by Folkways as susceptible to discontinuance should the two sponsors choose not to continue their purchases. Whether (1) these two programs are of a public service nature, and (2) whether the two unidentified sponsors would discontin their sponsorship in the event the instant application is granted remain unknown facto Folkways has not clarified either variable, and apparently has talked to neither spons about the matter since in Paragraph 20 of its Petition to Deny it expressly indicates that its views are based upon "experience".

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of public service programming". Just how much is a "significant degree" or what would be construed as a "significant reduction" is left unexplained. Apparently Folkways has not found any sponsor who stated that his sponsorship would be discontinued if Mr. Crowder's application is granted since it mentions none in that light. Not only is this true with respect to programming, but Folkways does not even allege that its public service spot announcements would be reduced.

21. Folkways in Paragraph 13 of its amendment indicates that because it is a one rate daytime only station a shift of public service programs and public service spot announcements to other time segments "would not make any great deal of difference". However, it speculates, that any such shifts might deprive listeners of the programs depending on their listening hours. Again, nothing factually concrete is supplied to the Commission to assist it in the decisional process.

22. As to percentages of the total Folkways' broadcast time devoted to public service programming, Folkways approximates 24.39% based upon its most recent composite week. With respect to the cost thereof, Paragraph 19 of Folkways' Petition to Deny indicates that in 1961 $35,000 was so consumed with $29,700 devoted to such programming through September of 1962. While apparently classifying public service programs for this purpose as being of a sustaining nature, elsewhere in its Petition to Deny (Paragraph 20) Folkways speaks of some of its public service as being commercial. While not of particular importance in view of Folkways' increasing local broadcast revenues and the rising economy of Harriman and its environs as disclosed by the Folkways amendment, the self-serving statistics supplied by Folkways in December

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of 1962 when it filed the Petition to Deny are neither current nor persuasive.[4/]

23. In response to the Commission's inquiry concerning changes in programming personnel, Folkways generalizes again. It does not go on record as stating that the staff would be reduced. It does not indicate how many of its staff participate in programming. It does not identify any individual or job assignment as being susceptible of elimination. It does not state that it intends to reduce working hours or staff compensation in the event the instant application is granted. Folkways simply states in Paragraph 9 of its amendment that it foresees a need in the event of a grant of Mr. Crowder's application to reduce expenses and that "station staff is one of the principal places where this can be accomplished". Just how such equivocation provides the pleading specifics envisioned as being necessary to support an economic issue in the Missouri-Illinois Broadcasting Co. case (File No. BP-15057)[5/] is obscure indeed.

Question 10

> "What information, if any, do you have that some or all of the public service programming will not be carried by the proposed station?"

24. Folkways' reply to this question is the following sentence: "WHBT has no information that the public service programming proposed will not be carried out by

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4/ It is noteworthy that in 1962 Folkways spoke in terms of dollars in referring to public service programming and announcements. In its 1964 amendment, it speaks in terms of percentages without reference to dollar cost. Using its 1964 alleged percentage figure of 24.39 with its total 1963 broadcast revenue of $88,650, the 1963 dollar cost of public service broadcasting dropped to $21,621.74. Of course, even this assumes necessarily that the 24.39 figure is truly representative, and not a selection of a particularly high public service broadcast day out of the seven days of a composite week.

5/ A copy of the Memorandum Opinion and Order in this case was supplied to Folkways by the Commission communication dated August 13, 1964, and was specifically referred to by the Commission when it informed Folkways on that date that the questions must be answered to enable a determination as to whether Folkways had alleged specific and material questions of fact which would require an evidentiary hearing.

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the captioned applicant". This, it is submitted, is of dispositive importance. Clear beyond need for authority citation is the fact that Commission concern is with the public interest as contrasted with a preoccupation with protection of Folkway's economics as a Commission licensee. Where, as here, a petitioner is unable to demonstrate that the public interest will be affected by loss of public service or other desirable programming, it fails utterly to present an issue which can be the proper concern of a regulatory agency.

Question II

> "Will a grant of the proposal require you to make substantial changes in your total present program format and policies. State full details."

25. Perhaps it is here that the inability of Folkways to supply to the Commission the factual detailed specifics requested is most apparent. In response to this question, which is phrased to acquire detailed information, Folkways answers thusly. "A grant of the proposed station would result in substantial changes in the WHBT program format policies because this policy has been based on a decision to employ and keep competent employees by paying them a living wage and providing them additional time for planned programming, planned for the best interests of all the public in the community, the advertiser, and the station". Folkways adds one further self-serving conclusion; to-wit, "Elimination of any of these personnel would necessarily result in a degradation of programming service to the community". This, in toto, is Folkways' response. It is difficult to conceive of a less responsive answer to a completely understandable question than is this. The answer offers no details, resting instead upon an obvious conclusion affected by equally patent self-interest. Inherently it is inconclusive and confusing.

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Illustratively, only Folkways knows what it means when it uses such phrases as "planned programming" and the degree or extent, if any, of an alleged "degradation of programming service". Once again, despite a request for specific factual data to be used by the Commission in resolution of the issue ostensibly raised by Folkways' Petition to Deny, Folkways seeks refuge in generalities, innuendo, speculation, and self-serving conclusions sans factual predicates. In view of the fact that Folkways has attempted to raise an economic issue, perhaps a parody upon a familiar commercial message is in order. Folkways would rather switch than fight.

Question 12

> "Set forth any other information which is sufficiently related to the economics of broadcasting, including the specific relationship between any assumed losses in revenue to the withdrawal of particular programs or program services in support of the question raised in petition to deny concerning the inability of the area to support another broadcast station without loss or degradation of program service to the area."

26. To this, Folkways merely states, "WHBT has no specific additional information to submit". The rest of the "responsive" paragraph is composed of the same general self-serving conclusions without supporting data that typlifies the rest of its amendment. If the Commission looks for particulars and specifics to weigh in determining whether an issue has been properly raised by Folkways, it will not find them here.

27. In sum and on balance, Folkways has failed utterly to supply meaningful information to the Commission in response to the inquiries of August 13, 1964. Perhaps summarily indicative of its present untenable position is the statement in its

"Reply of WHBT to Opposition to Petition to Deny" dated January 28, 1963. In Paragraph 15 thereof, it attributes the efficacy of its theory of economic difficulty to the alleged "fact" that a third station could not be sustained by Roane County's (present) economy. It states, "Further, the inability of the County's economy to generate additional revenues is the reason the (two) existing stations have suffered losses over the past five years...". By its own admission, during the past three years, from 1961 through 1963, its local advertising sales have risen almost 24%. Total revenues are up more than 16%, and aggregate retail sales have increased more than 9%. Folkways also admits that it is acquiring only about one-fourth of the available advertising potential. At face value these statistics refute its position. They are, it is submitted, of sufficient importance in this context to dispose without further abuse of the administrative process of the economic issue Folkways has attempted to raise. To use Folkways' own phrase, when coupled with the refusal of Folkways' to supply the specifics the Commission requested in its communication to Folkways of August 13, 1964, no troubling doubt remains.

Wherefore, the premises considered it is respectfully submitted that the Petition to Deny, as amended, submitted by Folkways Broadcasting Company, Inc., in opposition to the application of F.L. Crowder, tr/as Harriman Broadcasting Company, for a new standard broadcast station in Harriman, Tennessee, should be denied.

Respectfully submitted,

F. L. Crowder tr/as
HARRIMAN BROADCASTING COMPANY

Donald E. Bilger

By /s/ Donald E. Bilger
Donald E. Bilger
Smith & Pepper
Its Attorneys

1111 E Street, N.W.
Washington, D.C. 20004

November 6, 1964

AFFIDAVIT

F. L. Crowder, being duly sworn, does hereby state that he has read the foregoing "Opposition To Amendment To Petition to Deny", and that the facts therein stated, unless susceptible to official notice or attributable to recognized sources, are true and correct based upon his personal knowledge and information.

F. L. Crowder

F. L. Crowder

Subscribed and sworn to before me this 29 day of Oct., 1964.

(SEAL)

R. H. McCain

Notary Public

My Commission Expires: Aug. 15, 1966

CERTIFICATE OF SERVICE

I, Roberta Mandell, a secretary in the law offices of Smith & Pepper, do hereby certify that I mailed, this 6th day of November, 1964, postage prepaid, a copy of the foregoing "Opposition To Amendment to Petition to Deny" to:

Miller & Schroeder
808 Munsey Building
Washington, D.C. 20004
Counsel for Folkways Broadcasting Company, Inc.

Mr. Richard W. Holloway
Radio Station WRKH
Rockwood, Tennessee

Mr. Harry T. Burn, President
First National Bank & Trust Company
Rockwood, Tennessee

Mr. James B. Sheridan
Chief, Broadcast Bureau
Federal Communications Commission
Washington, D.C. 20554

Roberta Mandell

/s/ Roberta Mandell
Roberta Mandell

[309]

December 17, 1965

VIA AIR MAIL

8831

Mr. F. L. Crowder
Harriman Broadcasting Co.
P. O. Box 39
Livingston, Tennessee 38570

Dear Sir:

This refers to your application (BP-15122) for a construction permit for a new standard broadcast station at Harriman, Tennessee, and to your opposition to the petition to deny filed by Folkway Broadcasting Company, licensee of WHBT, Harriman.

In your opposition you state, *inter alia*, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were party to an application for a construction permit for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50% partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this matter. Such supplemental statement should be served upon the petitioners and their counsel, if any.

We hope to give this matter expedited consideration in view of the lengthy period of time your application has been pending before the Commission and accordingly request that you file your response to this letter within ten (10) days hereof.

Very truly yours,

Ben F. Waple
Secretary

cc: Donald E. Bilger, Esquire – picked up by attorney
John P. Bankson, Jr., Esquire
Folkways Broadcasting Company, Inc.
Mr. Richard W. Holloway
First National Bank & Trust Company of Rockwood

SMITH & PEPPER
ATTORNEYS AT LAW
1101 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TELEPHONE
296-0600

E. STRATFORD SMITH
VINCENT A. PEPPER
JOHN P. COLE, JR.
THOMAS G. SHACK, JR.
THOMAS W. FLETCHER
ROBERT F. CORAZZINI
ROBERT W. HEALY
DONALD E. BILGER
ROGER E. ZYLSTRA

RECEIVED
DEC 27 1965
F.C.C.
OFFICE OF THE SECRETARY

December 27, 1965

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: 8831

Dear Mr. Waple:

Transmitted herewith, on behalf of Mr. F. L. Crowder, tr/as Harriman Broadcasting Company, are an original and nineteen copies of a "Supplemental Statement" in connection with File No. BP-15122 for a construction permit for a new standard broadcast station at Harriman, Tennessee.

Should further information be desired in connection with this matter, please communicate with this office.

Very truly yours,

Donald E. Bilger
Donald E. Bilger

Enclosures (20)

[illegible] (14)
[illegible] B/C
[illegible] 19 12/29/65

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311

SUPPLEMENTAL STATEMENT

With respect to the Commision's letter of inquiry dated December 17, 1965, concerning the pending application (BP-15122) for a construction permit for a new standard broadcast station at Harriman, Tennessee, the applicant therefor submits the following statement.

In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation thereof, and for that reason both stations were sold in that year. It was his intention then to withdraw from such activity, and the Commission was so informed.

That same year, his brother-in-law, Mr. R. H. McCoin, was unemployed and wished to become engaged in broadcasting, having sold his car agency in 1955. Because he was totally inexperienced in such matters, Mr. McCoin looked to Mr. Crowder for guidance and wanted him to have a 50% interest. Mr. Crowder agreed to do so upon two premises; i.e., (1) that he would act in a supervisory capacity in the preparatory stages of the application and until the station went on the air, and (2) after that point in time he would act only as an advisor upon an as-needed basis. While the term "General Manager" perhaps is not wholly descriptive of his activity in recommending and hiring attorneys and consulting engineers, obtaining equipment, and the like, it was not used with intent to deceive or to confuse. In point of fact, it did describe his overall responsibility before the station began broadcasting. Subsequent thereto, he was not active in any role except that of an advisor, a situation which existed from about November, 1956, to June, 1964, when he disposed of his stock interest.

In sum, because of the then state of his health Mr. Crowder's last operational activities upon a routine basis in the broadcast field occurred in 1956 before he disposed of his interests in the Sweetwater and Harriman stations. From approximately November, 1956, (when the Livingston station went on the air) until about June, 1964, (when he sold his interest in that facility) his only activity in connection with this station other than purely as a stockholder was in an advisory capacity upon an occasional basis when his brother-in-law as "Station Manager" relied for advice upon what expertise Mr. Crowder had accumulated in this field.

Respectfully submitted,

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY

Donald E. Bilger
By /s/ Donald E. Bilger
Donald E. Bilger

Smith & Pepper
Its Attorneys

1101 17th Street, N.W.
Washington, D. C. 20036

December 27, 1965

AFFIDAVIT

F. L. Crowder, being duly sworn, does hereby state that he has read the foregoing "Supplemental Statement", and that the facts therein stated, unless susceptible to official notice, are true and correct based upon his personal knowledge and information.

F L Crowder
/s/ F. L. Crowder
F. L. Crowder

Subscribed and sworn to before me this 27th day of December, 1965.

(SEAL)

Robert E. Gorish
Notary Public

My Commission expires April 1, 1966.

CERTIFICATE OF SERVICE

I, Grace C. Gelches, a secretary in the law offices of Smith & Pepper, do hereby certify that I mailed, this 27th day of December, 1965, postage prepaid, a copy of the foregoing "Supplemental Statement" to:

John P. Bankson, Jr., Esquire
Munsey Building
Washington, D. C. 20004
Counsel for Folkways Broadcasting Company, Inc.

Mr. Richard W. Holloway
Radio Station WRKH
Rockwood, Tennessee

Mr. Harry T. Burn, President
First National Bank & Trust Company
Rockwood, Tennessee

Mr. James B. Sheridan
Chief, Broadcast Bureau
Federal Communications Commission
Washington, D. C. 20554

First National Bank & Trust Company
Rockwood, Tennessee

Folkways Broadcasting Company, Inc.
Radio Station WHBT
Harriman, Tennessee

Grace C. Gelches

/s/ Grace C. Gelches
Grace C. Gelches

LAW OFFICES
MILLER and SCHROEDER
Munsey Building
Washington, D. C. 20004

December 30, 1965

Secretary
Federal Communications Commission
Washington, D.C. 20554

In re: Harriman Broadcasting Company, BP-15122
FCC Ref. 8831

Dear Sir:

As your files reflect, this office represents Folkways Broadcasting Company, Inc., licensee of WHBT, Harriman, Tennessee, one of the petitioners to deny the application of F. L. Crowder tr/as Harriman Broadcasting Company for a new station in Harriman. The within comments are directed to F. L. Crowder's December 27th response to the Commission's letter of December 17, 1965 (FCC 8831), all concerning an apparent inconsistency between a sworn statement made by Crowder in his January 8, 1963 opposition to WHBT's petition to deny and representations made by him under oath in applications concerning WLIV, Livingston, Tennessee. We believe that it would not be appropriate to extend the within letter with a repetition of the details heretofore shown in the petition to deny and/or Crowder's opposition thereto anent the apparent inconsistency, but for the sake of continuity of the following comments, the pertinent facts will be first summarized.

In the early part of 1956 Crowder sold two stations he then had, WHBT in Harriman, Tennessee (BAL-2321) and WDEH in Sweetwater, Tennessee (BAL-2240, BAL-2399).[1] At the same time he applied, as a partner and the proposed general manager, for a new station in Livingston, Tennessee (BP-10326). In neither of the WDEH nor in the WHBT assignments did Crowder indicate that any reasons of health motivated the sales and he simply informed the Commission that he wanted to withdraw from broadcasting in Harriman and Sweetwater, respectively. As stated, simultaneously he was applying for a new station in Livingston, Tennessee. In the above-referenced petition to deny, Folkways raised, *inter alia*, the issue of trafficking in licenses on Crowder's part, pointing to the earlier WHBT and WDEH sales at a profit and the then-indicated (1962) sale by Crowder of his interests in WLIV. (See WHBT Pet. to Deny, pp. 20-23).

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[1] The first assignment application was withdrawn after the Commission raised questions about the qualifications of the proposed assignee, and a new purchaser and assignee was found. The second contract of sale was executed on July 24, 1956 (BAL-2399).

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In opposition to the petition to deny, Crowder stated in a sworn statement that "The true facts . . . are that Crowder was forced to sell his radio interests due to ill health. Upon a doctor's advice Mr. Crowder *retired completely from active participation in the radio broadcast industry*." (Crowder Opp., Para. 20, italics supplied.)

The inconsistency in the representation made in the application for Livingston (including a modification application filed August 20, 1956 where Crowder did not in any way change the January 1956 representations anent staffing proposal) that Crowder was to have an active role as general manager in WLIV and his January 1963 contrary representation that in early 1956 he had to retire completely from active participation in broadcasting was pointed out in Folkways' reply filed January 28, 1963. It was in this context, apparently, that the Commission addressed its December 17, 1965 letter of inquiry to Crowder, calling upon him for an explanation of the apparent inconsistencies between his earlier filed sworn representations. Crowder's response thereto, dated December 27th and also under oath, not only fails to explain the inconsistencies in the earlier filed sworn representations but itself raises further questions of serious divergencies and inconsistencies.

The Commission now has three different sworn representations proffered by Crowder concerning his 1956 activities with respect to the sales of WHBT and WDEH and the acquisition of WLIV. First, there is the representation in the January 1956 WLIV application that Crowder was to be the general manager, which representation was unchanged and reaffirmed in a modification application of August 1956 and in renewal applications filed as late as May 2, 1961 (see, *e.g.*, BR-3365, filed May 2, 1961, Sec. IV, Para. 12). Secondly, there is the sworn representation by Crowder in the January 8, 1963 opposition to petition to deny that he was in such ill health in early 1956 that he had to sell WHBT and WDEH and "retire completely from active participation in broadcasting". Thirdly, there is the December 27, 1965 sworn "explanation" of the earlier divergent statements that Crowder's last operational activities on a routine basis in the broadcast field occurred prior to his disposal of WDEH and WHBT, *i.e.*, well prior to July 1, 1956.

It is abundantly clear, we submit, that none of the aforegoing statements can be reconciled one with the other. The Commission should be more than disturbed by the aspect of concealment and misrepresentation raised by the divergencies. Furthermore, when Crowder was called upon to explain the divergencies he refused to be frank and candid with the Commission, and his so-called explanation of December 27, 1965 does itself raise further questions of misrepresentation.

First, we see that Crowder now says that in 1956, prior to the sale of WHBT and WDEH (first WDEH sale contract was January 18, 1956. See BAL-2240), his health became such that he could no longer continue in any day to day broadcasting activities and

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for that reason sold the stations. He alleges that ". . . and the Commission was so informed", but this is obviously not so since the 1956 assignment applications with respect to WDEH and WHBT in no way indicated that any health reason prompted the sales (see BAL-2321, BAL-2240 and BAL-2399). Crowder's refusal to be frank and candid with the Commission even now in contending that he informed the Commission in 1956 that he intended to withdraw from active broadcasting activities because of health problems cannot be gainsaid.

Secondly, Crowder now says that the 1956 application for Livingston was upon two premises which were not then or thereafter revealed to the Commission. Crowder states that the undisclosed premises were: (1) that he (Crowder) would act only in a supervisory capacity in the preparatory stages of the application and until the station went on the air, and (2) after that point in time he would act only as an advisor upon an as-needed basis. However, in the application itself not only were the premises not disclosed, but the contrary representation was made that Crowder was to be the station's general manager and a part of its operational staff (BP-10326, Sec. IV, Para. 12). The "general manager" representation was not changed in a subsequent modification application (BMP-7341). Furthermore, in renewal applications thereafter filed through 1961, it was represented that Crowder was in fact the general manager of WLIV. The Commission was not informed that Crowder was not the general manager of WLIV until after the question was raised in

1963 by the pleadings in connection with the petition to deny concerning those representations.[2]

We think the Commission should reject Crowder's instant argument that there was no misrepresentation or concealment in his representation that he would be and was general manager of WLIV. Crowder's suggestion that "While the term 'General Manager' perhaps is not wholly descriptive of his activity" is a master piece of understatement. Surely the Commission does not condone an applicant claiming for its "general manager" a person who will not be active in connection with the station except in an advisory capacity upon an occasional basis, which Crowder says was his actual role at WLIV after the station went on the air. Finally, on this point, it must be noted that Crowder's instant explanation of how he uses the term "general manager" raises a new question with respect to the very application now under consideration, *i.e.*, BP-15122 for Harriman, Tennessee. In the staffing proposal for the new station Crowder lists himself as General Manager (Section IV, Para. 12), and in his opposition to the petition to deny he argued the sufficiency of the staff proposal to accomplish the operation proposed. For example, in contending against issues

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[2] After the petition to deny was filed on December 10, 1962, the next subsequent application filed for the Livingston, Tennessee station, WLIV, finally indicated that McCoin rather than Crowder was the general manager. See BR-3365, filed April 28, 1964.

[318]

of financial qualification and an ability of Harriman to support the station, Crowder posited arguments as to the sufficiency of his proposal on such statements as that his station "would be well managed" (Crowder Opp., Para. 17), adverting to himself and his experience in that connection. Whether or not he is concealing or misrepresenting material facts in his present application by the use of the term "general manager" or whether he is using the phrase in the very limited fashion he now says he used it previously in connection with WLIV, are questions raised by his instant "explanation". In view of the "explanation", the Commission will be even less able than it was before to make a finding that the applicant is legally and financially qualified and that the proposal is in the public interest, convenience and necessity.

For all the foregoing reasons, we submit that upon consideration of Crowder's December 27, 1965 sworn "explanation", the Commission should see that Crowder not only failed to explain in any satisfactory way the earlier divergent sworn representations but that such "explanation" reinforces the need for a denial of the application or for an evidentiary hearing at which the questions of the apparent misrepresentations and concealments and whether or not the applicant possesses the requisite character qualifications in light of such matters can be determined.

Respectfully submitted,

FOLKWAYS BROADCASTING
COMPANY, INC.

By: MILLER AND SCHROEDER
Its Attorneys

John B. Kenkel

cc: Donald E. Bilger, Esq., Attorney for F.L. Crowder
Richard W. Holloway, Radio Station WRKH
Harry T. Burn, First National Bank & Trust Co.
James B. Sheridan, Chief, Broadcast Bureau

NEVILLE MILLER
ARTHUR H. SCHROEDER
JOHN B. KENKEL
JOHN B. BANKSON, JR.
ROBERT M. BOHN, JR.

TELEPHONE
METROPOLITAN 8-219
AREA CODE 202

LAW OFFICES
MILLER AND SCHROEDER
MUNSEY BUILDING
WASHINGTON, D. C. 20004

RECEIVED
JAN 7 1966
OFFICE OF THE SEC

January 7, 1966

B/C 7 ac.

Secretary
Federal Communications Commission
Washington, D. C. 20554

Granted
1-12-66

In re: Harriman Broadcasting Company, BP-15122
FCC Ref. 8831

Dear Sir:

This follows up our letter of December 30, 1965, concerning the question earlier raised by the Commission and a response thereto by the applicant Crowder anent the latter's alleged "health" problems in 1956 which he claims necessitated his withdrawal from business activity and the sale of WDEH and WHBT. We wish to report here further indications of Crowder's activities which appear contrary to his referenced representation.

The Livingston Enterprise, a newspaper published and circulated in Livingston, Tennessee, reports the following in its issue of September 21, 1956:

> "Last week the Livingston Bottling Co., bottlers of 7-Up and Grapette products, was sold by R. J. Long to Freeman L. Crowder of Harriman, who purchased the plant and the franchise for several counties. Various reports have been made as to the amount of the transaction, but is regarded as one of the largest cash deals made here."

The Harriman Record, a newspaper published and circulated in Harriman, Tennessee, reports in its issue of April 19, 1956, Crowder's sale of WHBT, and the newspaper item includes the following statement:

> "Mr. Crowder sold his Sweetwater radio station last January. He said he had no immediate personal plans, although he plans to start a new radio station in Livingston this summer."

Secretary
Federal Communications Commission

Page 2
January 7, 1966

Copies of the newspaper articles themselves are not immediately available, but will be obtained and furnished if you so desire.

Respectfully submitted,

FOLKWAYS BROADCASTING COMPANY, INC.

By: MILLER AND SCHROEDER
Its Attorneys

John B Kenkel

JOHN B. KENKEL

cc: Donald E. Bilger, Esquire,
  Attorney for F. L. Crowder
 Richard W. Holloway,
  Radio Station WRKH
 Harry T. Burn,
  First National Bank & Trust Co.
 James B. Sheridan, Esquire
  Chief, Broadcast Bureau

JBK:kac

JA 250

FCC Form 351
June 1964

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

File No. BP-15,12[redacted]
Call Letters - - -

321

STANDARD BROADCAST STATION CONSTRUCTION PERMIT

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit,[1] authority is hereby granted to

F. L. CROTTER tr/as HARRIMAN BROADCASTING CO.

to construct a standard broadcast station located and described as follows:

1. Station location: State Tennessee City Harriman
2. Transmitter location: State Tennessee County Roane
   City or Town Harriman
   Street and number Emory Street
   North Latitude: Degrees 35 Minutes 55 Seconds 41
   West Longitude: Degrees 84 Minutes 33 Seconds 00
3. Main studio location: State Tennessee County Roane
   City or Town Harriman
   Street and number To be determined
4. Description of transmitter: COLLINS RADIO CO., Type 20-V, Broadcasting Transmitte
   (or other transmitter currently listed in the Commission's "Radio Equipment List, Part B, Aural Broadcast Equipment" for the power herein authorized).
   Transmitter may be operated by remote control from the main studio location, which will be specified in an application for license.
5. Description of antenna system:
   Antenna: 200' (208' overall height) uniform cross-section, guyed, series-excited, vertical, steel tower.
6. Description of ground system:
   Ground system consists of 120 buried copper wire radials 250 feet in length, plus a 24' x 24' ground screen.
   Obstruction marking specifications in accordance with paragraphs 1, 3, 11, 21 and 22 of FCC Form 715 attached.

Hours of operation - daytime as follows:

Jan.	7:45am to 5:45pm;	Feb.	7:30am to 6:15pm;
Mar.	6:45am to 6:45pm;	Apr.	6:00am to 7:15pm;
May	5:30am to 7:30pm;	June	5:15am to 8:00pm;
July	5:30am to 8:00pm;	Aug.	6:00am to 7:30pm;
Sep.	6:15am to 6:45pm;	Oct.	6:45am to 6:00pm;
Nov.	7:15am to 5:30pm;	Dec.	7:45am to 5:30pm;

Eastern Standard Time.

7. Operating assignment:
   (a) Frequency 970 kilocycles.
   (b) Power: Night -
   Day 500 watts - non-directional antenna
   (c) Hours of operation Daytime
8. Date of required commencement of construction March 12, 1966
9. Date of required completion of construction September 12, 1966
10. Equipment and program tests shall be conducted only pursuant to Sections 73.95 and 73.96 of the Commission Rules.
11. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See Section 1.598 of the Commission Rules.

[1] This construction permit consists of this page and pages 2.

Dated: January 12, 1966.

tma

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

F.C.C. - Washington, D. C.

BEST COPY
from the original

BP-15,122 - - - 1-12-66

The authority granted herein is subject to the following conditions:

Pending a final decision in Docket No. 14419 with respect to pre-sunrise operation with daytime facilities, the present provisions of Section 73.87 of the Commission's Rules are not extended to this authorization, and such operation is precluded.

AVAILABLE
bound volume

FCC Form 715
February 1960

ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

1 Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 40 feet nor less than 1-1/2 feet in width. All towers shall be cleaned or repainted as often as necessary to maintain good visibility.

2 There shall be installed at the top of the tower at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. The two lights shall burn simultaneously from sunset to sunrise and shall be positioned so as to insure unobstructed visibility of at least one of the lights from aircraft at any angle of approach. A light sensitive control device or an astronomic dial clock and time switch may be used to control the obstruction lighting in lieu of manual control. When a light sensitive device is used it should be adjusted so that the lights will be turned on at a north sky light intensity level of about thirty-five foot candles and turned off at a north sky light intensity level of about fifty-eight foot candles.

3 There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 500- or 620-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to one-half of the luminous period.

4 At approximately one-half of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

5 At approximately two-fifths of the over-all height of the tower one similar flashing 300 m/m electrice code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

6 On levels at approximately twothirds and one third of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

7 On levels at approximately four-sevenths and two-sevenths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

8 On levels at approximately three-fourths, one-half and one-fourth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

9 On levels at approximately two-thirds, four-ninths and two-ninths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

10 On levels at approximately four-fifths, three-fifths, two-fifths, and one-fifth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed heights.

11 At the approximate mid point of the over-all height of the tower there shall be installed at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS, or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

12 On levels at approximately two-thirds and one-third of the over-all height of the tower, there shall be installed at least two 100-, 107-, 111 or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

13 On levels at approximately three-fourths and one-fourth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

14 On levels at approximately four-fifths, three-fifths and one-fifth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

15 On levels at approximately five-sixths, one-half, and one-sixth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

16 On levels at approximately six-sevenths, five-sevenths, three-sevenths and one-seventh of the over-all height of the tower at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

17 On levels at approximately seven-eighths, five-eighths, three-eighths, and one-eighth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

18 On levels at approximately eight-ninths, seven-ninths, five-ninths, one-third and one-ninth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

19 On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths, and one-tenth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

20 All lighting shall be exhibited from sunset to sunrise unless otherwise specified.

21 All lights shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

22 During construction of an antenna structure, for which obstruction lighting is required, at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be installed at each such level. These temporary warning lights shall be displayed nightly from sunset to sunrise until the the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

THIS FORM IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION

F.C.C. - Washington, D. C.

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323-A

FCC Form 361
March 1953

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

MODIFICATION OF CONSTRUCTION PERMIT
STANDARD BROADCAST STATION

File No. BP-15,122
Call Letters W X X L
Modification No. 1

Harriman Broadcasting Co.
Radio Station W X X L
P. O. Box 39
Livingston, Tennessee 38570

Permittee: F. L. CROWDER tr/as HARRIMAN BROADCASTING CO.

Station location: State Tennessee City Harriman

The Authority Contained in Authorization File No. BP-15,122 dated January 12, 1966 granted to the Permittee listed above is hereby modified in part as follows:

Call letters W X X L assigned.

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated this 18th day of May, 19 66

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

F.C.C. - Washington, D. C.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 66-46
77542

In re Application of

F. L. Crowder tr/as
HARRIMAN BROADCASTING CO.
Harriman, Tennessee

File No. BP-15122

Requests: 970kc, 500w, Day, Class III

For Construction Permit

MEMORANDUM OPINION AND ORDER

Adopted: January 12, 1966

By the Commission: Commissioner Bartley dissenting and issuing a statement; Commissioner Cox dissenting; Commissioner Wadsworth concurring and issuing a statement.

1. The Commission has before it for consideration (a) the above-captioned and described application; (b) the three Petitions to Deny, each filed on December 10, 1962, by (1) Richard W. Holloway tr/as Dick Holloway Broadcasting Company, Inc., licensee of Station WRKH, Rockwood, Tennessee, (2) Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, and (3) the First National Bank and Trust Company of Rockwood; (c) the three "Oppositions" to each of the above petitions to deny, filed on January 8, 1963, by the applicant; (d) the three "Replies" each filed on January 28, 1963, by each of the petitioners; (e) the letter, filed on February 15, 1963, by the Scripps-Howard Broadcasting Company, licensee of Station WNOX, Knoxville, Tennessee; (f) the "Amendment to Petition to Deny", filed October 12, 1964, by

Folkways Broadcasting Company (WHBT) and (g) the "Opposition to Amendment to Petition to Deny", filed on November 6, 1964, by the applicant.

2. Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, and Dick Holloway Enterprises, licensee of Station WRKH, Rockwood, Tennessee, base their claim of standing on the grounds that the above-captioned applicant would compete with their respective stations for listening audience and advertising revenues and, therefore, a grant of the proposed station would have an adverse economic impact on their stations. The applicant does not contest the standing of either petitioner. The Commission finds that the petitioners have standing as "parties in interest" within the meaning of Section 309(d)(1) of the Communications Act of 1934, as amended, and Section 1.580(i) of the Commission's Rules. *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 9 R.R. 2008 (1940).

3. The First National Bank and Trust Company of Rockwood claims standing as a "party in interest" on the grounds that it is the holder in due course of a note (bearing the date of June 20, 1956) executed by Folkways Broadcasting Company, payable to the order of Freeman L. Crowder (the applicant herein) and his wife, Tammie Crowder, which is secured by a Chattel Mortgage and a Deed of Trust. These instruments were given to the named payee to secure the balance owed them on the sale of Station WHBT to the Folkways Broadcasting Company, Inc. Mr. Crowder sold the note to the Bank on May 2, 1961. The Bank alleges that the proposed station would compete

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with WHBT, that this competition would affect the ability of WHBT to repay the note as well as affect the value of the security, and, therefore, that a grant of the application would threaten economic injury to the Bank. The applicant, in its opposition to the Bank's petition, contests the standing of the Bank to file its petition to deny.

4. The Commission has consistently held that a party claiming standing as a "party in interest" under Section 309(d)(1) of the Communications Act of 1934, as amended, on the basis of alleged economic injury must show a direct and immediate injury and not merely nominal or speculative injury. A protestant must show that a grant of the proposed station is reasonably likely to result in some injury of a direct, tangible and substantial nature. *National Broadcasting Co. (KOA) v. FCC*, 76 U.S. App. D.C. 238, 132 F.2d 545 (D.C. Cir. 1942), aff'd 319 U.S. 239 (1943); *National Broadcasting Co., Inc.*, 15 R.R. 965 (1957). There must also be a clear showing of the causal relationship between the applicant being contested and the alleged economic injury. *Midwest Television, Inc.*, 9 R.R. 611 (1957). The Commission finds that the petitioner had not sufficiently demonstrated that a grant of the proposed station would probably result in a substantial, immediate and direct injury as required by the cases cited above. The *National Coal Association v. FCC*, 89 U.S. App. D.C. 135, 191 F.2d 462 and *Granik et al v. FCC*, 98 U.S. App. D.C. 247, 234 F.2d 682 cases cited by the petitioner are distinguishable from the present situation. In the former case, the groups seeking to establish standing represented persons who were competitors of the successful certificate applicant. In the latter case the Court found that the licensee had contracted to apply to the Commission for assignment of its license to the protestants and that under the "novel circumstances" of the case, the protestants had a tangible, substantial and particular interest in the subject matter of the Commission's proceedings. Unlike the cases it cites, the Bank's allegations of economic injury are too remote and speculative and hence do not bring the Bank into sufficiently close relationship to the application to permit them to file a formal petition to deny

against the application. The Commission finds that the Bank lacks the requisite standing to file its petition and, accordingly, the petition will be dismissed. However, it should be noted that the question raised by the Bank concerning the economic effect of the proposed station on the existing licensees in the area is considered, *infra*, in connection with the economic allegations of the other petitioners herein.

5. Folkways Broadcasting Company, Inc. (WHBT) asserts that the above-captioned application should be denied or in the alternative designated for hearing upon the following issues: (a) *Carroll* issue[1]; (b) to determine whether the applicant is financially qualified to construct and operate the proposed station and whether its estimate of expected operating revenues and expenses is reasonable; (c) to determine whether the applicant, in view of his proposals as to staff and operating expenses, is qualified to operate his station in the manner proposed; (d) *Suburban* issue[2]; (e) to determine

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[1] *Carroll Broadcasting Company v. FCC,* 103 U.S. App. D.C. 346, 258 F.2d 440, 17 R.R. 2066 (1958).

[2] *Gary et al (Suburban Broadcasters) v. FCC,* 112 U.S. App. D.C. 257, 302 F.2d 191, 23 R.R. 2016 (1962).

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whether the applicant has concealed or failed to disclose or attempted to misrepresent any material representation in connection with the statements in his application concerning his efforts to survey the community he proposes to serve and the community's needs; (f) to determine whether the applicant has been engaged in the trafficking of broadcast authorizations, and whether the proposal for a station in Harriman, Tennessee, would create an opportunity for trafficking contrary to the purpose for which a broadcast authorization is granted and (g) to determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience, and necessity. Dick Holloway Enterprises (WRKH), in its petition, raises a *Carroll* issue.

6. Folkways Broadcasting Company, Inc. (WHBT) requests the specification of a *Suburban* issue on the grounds that the applicant has failed to ascertain the programming needs of Harriman, Tennessee. Petitioner further alleges that the applicant has concealed or failed to disclose matters concerning letters submitted by the applicant in substantiation of the assertion that he has familiarized himself with the needs and interests of the community. F. L. Crowder, the individual applicant, was the sole owner of WHBT in Harriman from 1950 to 1956. At present he is the owner of a business in Harriman and resides in Livingston, Tennessee which is some fifty miles away. The applicant alleges that the programming proposals were based in large measure upon Mr. Crowder's personal and everyday knowledge as a broadcast businessman, of the area and the people which he intends to serve, as well as his intimate personal contact with these people at the present time. In an amendment to his application, he submitted fifteen letters supporting his contention that efforts have been made to ascertain the programming needs of Harriman. The petitioner disputes the relevance of these letters on the basis that eight of them are from sources outside the community and merely discuss the availability of program material. The remaining letters are challenged on the basis that they are misleading. It is claimed that the letters submitted by the applicant were actually obtained by his former commercial manager of Station WHBT, Walter H. Scarborough, who offered the persons interviewed prepared statements indicating their enthusiasm over the prospect of an additional broadcast station in Harriman. The petitioner also has submitted letters from three of those interviewed either rescinding or modifying their earlier letters. However, there is no dispute that the letters in

question were signed by the individuals to whom they were ascribed. Notwithstanding subsequent recissions or modifications by certain of the persons interviewed, the letters and other evidence submitted by the applicant indicate that a survey was conducted on the applicant's behalf. Furthermore, there is nothing in the manner in which the survey was made to indicate misrepresentation on the part of the applicant, although, as a matter of judgment, the manner in which the survey was made leaves something to be desired. In view of the applicant's survey, and (more important under the circumstances) his experience in and familiarity with the area, there has been a sufficient showing to make the specification of a *Suburban* issue or an issue on misrepresentation unnecessary. *Bootheel Broadcasting Co.*, 24 RR 292 (1962), *ABW Broadcasters, Inc.*, 1 RR 2d 65 (1963), *WGRY, Inc.*, 2 RR 2d 718 (1964), *Dennis A. Sleighter and Willard D. Sleighter (WWDS)*, 5 RR 983 (1965). Therefore, the requested issues on programming and misrepresentation will be denied.

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7. Folkways Broadcasting Company, Inc. (WHBT), also requests the specification of a "trafficking" issue. In support thereof, it alleges that Mr. Crowder in 1956 sold, for a profit, Stations WHBT, Harriman, and WDEH, Sweetwater, Tennessee, and in that same year applied for and was granted a construction permit for WLIV, Livingston, Tennessee, in which he held a 50% interest, and that Mr. Crowder's interest in WLIV was "put up for sale" less than a year after commencement of operation. The petitioner also alleges that Mr. Crowder's statement in his opposition pleading that he sold WHBT and WDEH for reasons of ill health is both inconsistent with the reasons given for selling in 1956 and with the acquisition in that year of 50% interest in WLIV, particularly since in the application for that station he was listed as proposed general manager of the station.

8. We believe that the entire history of Mr. Crowder's broadcast activities raises no question of "trafficking". Our records indicate that Mr. Crowder had an ownership interest in WHBT as early as 1946; that he became sole owner in 1950 and operated that station until 1956. He was sole owner and operator of WDEH from 1954 until it was sold in 1956, and he held his 50% interest in WLIV from 1956 until 1964. There is not a shred of factual support for the petitioner's claim that Mr. Crowder put his interest in WLIV up for sale in 1957. In summary, then, Mr. Crowder has been in and out of three radio stations over an 18-year period, and is currently applying for a fourth station. We do not believe that this record indicates a pattern of "trafficking". *Versluis Radio and Television, Inc.*, 9 R.R. 1123, 1141 (1954). Trafficking involves, among other things, intention, the element of time, and price. *Atlantic Coast Broadcasting Corporation of Charleston*, 22 R.R. 1045, 1051 (1962). The Commission considers both past and proposed transactions in order to discern a pattern of conduct indicating acquisition of station ownership for the purpose of profitable resale rather than for operation. *Franklin Broadcasting Company*, 22 R.R. 88 (1962). There have been no allegations that the resale price of the stations was exhorbitant, nor have there been any factual allegations supporting a contention that there was any intent on the part of Mr. Crowder to acquire radio stations for profitable resale. Accordingly, the request for an issue on "trafficking" will be denied.

9. Since there appeared to be an inconsistency between Mr. Crowder's representations in 1956 and in his opposition pleading, which was not explained in the application before us, Mr. Crowder was requested to supplement his pleading in this respect, and has done so. All of the parties have been given an opportunity to respond and have done so.[3] As a result of these recent filings, it is now clear

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[3] Although the parties, in their response filed on December 30, 1965, argue with the claims made by the applicant, they submit no facts which would raise a question concerning the validity of those claims.

to us that the inconsistencies are more apparent than real. Mr. Crowder did not state in 1956 that illness was the reason for withdrawing from the broadcast business, but his later statement to this effect is not inconsistent with the reason given in 1956 and accepted by the Commission, which was that he wanted to quit the broadcast business in Harriman and Sweetwater. His explanation concerning the application for Livingston in that same year and the representation that he would

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be "general manager" is also not inconsistent, in the light of his later explanation of the limited duties of that position.[4] Accordingly, we find that no question of misrepresentation has been raised warranting a hearing on the application.

10. Both petitioners, Dick Holloway Enterprises (WRKH) and Folkways Broadcasting Company, Inc. (WHBT), requested that a *Carroll* issue be specified on the grounds that the revenues in the area are inadequate to support another broadcast station without a net loss or degradation of service. In the *Missouri-Illinois Broadcasting Co.* case, 3 R.R. 2d 232 (1964), the Commission listed the type of material that a petitioner should submit in support of the request

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[4] Mr. Crowder explained that, in 1956, when the Sweetwater and Harriman stations were assigned, his health had become such that he could no longer continue in the day-to-day active operation of the stations. When the application for the Livingston station was filed in the same year, R. H. McCoin, Crowder's brother-in-law, desired to engage in broadcasting, but, because of his inexperience in the field, McCoin looked to Crowder for guidance and wanted Crowder to have a fifty-percent interest. Crowder agreed to act in a supervisory capacity until the Livingston station went on the air and to act in an advisory capacity thereafter. Mr. Crowder stated that, while the term, "general manager" is not wholly descriptive of his activity, the term was not used to deceive or confuse.

for a *Carroll* issue. Since the petitioners herein did not have notice of these new pleading requirements, they were given an opportunity to amend and amplify their allegations in support of the requested *Carroll* issue. Since WRKH has failed to amend its petition, its request for an economic issue must be considered on the basis of the pleadings on file. The Commission is of the opinion that the facts alleged by WRKH are not sufficient, on their face, to warrant the specification of the requested issue. The allegations are too generally stated and unsupported by sufficient factual data. On the basis of the allegations set forth in the petition to deny, the Commission cannot find that a substantial and material question of fact exists. Since WRKH's allegations, standing alone, do not provide an adequate basis for specifying the *Carroll* issue, the petition to deny will be dismissed.

11. The applicant, in its original opposition to the WHBT petition to deny, asserts that the Commission is without authority to designate his application for hearing on the *Carroll* issue.[5] The argument is predicated upon the fact that the U.S. Court of Appeals, a year after the *Carroll* decision, in *Delta Airlines, Inc. v. Civil Aeronautics Board*[6] indicated that a determination of the economic ability of an area to support additional licensees is "common place of public utility regulation". The applicant then argues that, since the Supreme Court has decided in the *Sanders* case[7] that "the field of broadcasting is one of free competition", the Commission exceeds its authority when it considers the economic effect of legal competition. In 1964, subsequent to the decision in the *Delta Airlines* case, the Court of Appeals affirmed the principal enunciated in the *Carroll* case, *supra*, applicable in the broadcast field, that the Commission

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[5] *Carroll Broadcasting Company v. FCC, supra.*

[6] 107 U.S. App. D.C., 174, 180, 275 F.2d 632, 638 (D.C. Cir. 1959).

[7] *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 474 (1940).

may inquire into the question of whether the economic effect of another station in an area would be to damage or destroy service to an extent inconsistent with the public interest. *KGMO Radio-Television, Inc., v. Federal Communications Commission*, 119 U.S. App. D.C. 1, 336 F.2d 920, 2 RR 2d 2057 (1964). The Commission has

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considered the various other arguments set forth by the applicant in support of its contention that the Commission lacks the authority to designate the application for hearing on the *Carroll* issue. However, in view of the holdings of the Court of Appeals in the *Carroll* and *KGMO* cases, the Commission must reject the applicant's contention and will consider the WHBT request for the specification of a *Carroll* issue on the merits.

12. WHBT urges that a grant of the application would result in injury to the public and requests that the application be denied or that the application be designated for hearing to determine whether there are adequate revenues available in the area to support an additional station without loss or degradation of broadcast service. *Carroll Broadcasting Company v. Federal Communications Commission, supra.* In support of this contention, WHBT alleges that the potential revenue for broadcast stations in the area is limited, that, in the face of a declining economy, the area cannot support an additional station, that the establishment of another station would result in loss in revenue requiring a reduction in the staff of WHBT. A reduction in staff, according to WHBT, would bring about the curtailment of public service programs and community activities of station personnel. WHBT contends that there is no assurance that the proposed station would be able to secure sufficient revenue to replace the service lost as a result of the division of the potential revenue between the Harriman and Rockwood stations.

13. As previously indicated (paragraph 10, *supra*), WHBT was afforded an opportunity to amend its petition to include specific factual allegations in support of its contention that the area could not support an additional station. In its original petition, the allegations advanced in support of the *Carroll* issue were, in large measure, conclusions and opinion without sufficient support. In its amendment, some additional factual information was submitted, but on some points the applicant made no attempt to supply the type of information which the Commission has indicated it requires to reach a determination as to whether a substantial question exists that the exstablishment of another station would result in injury to the public. *Missouri-Illinois Broadcasting Co.*, 3 RR 2d 232 (1964). For example, WHBT alleges that the economy of the county in which Harriman is located is declining in the face of a showing that retail sales are increasing. WHBT estimates that 400 to 425 businesses in the area, less an unspecified number of chain stores without local advertising budgets, are potential advertisers, but states that the station had 278 accounts over a two-year period. WHBT estimates that revenue of approximately $125,000 per year is available for advertising on radio, the estimate being based on "competitive" and "economic" conditions. The competitive and economic conditions, however, are described in the most general terms. When afforded an opportunity to show what advertisers would shift their advertising to the new station, WHBT declined to "speculate" on the contingency. WHBT asserts that the establishment of another station would result in a "significant reduction or destruction" of service, but does not indicate the extent or nature of the significant reduction or destruction. WHBT did not indicate the cost to the station of its public service programs and announcements except to indicate that, over a period of twenty-one months, time devoted to public service would have produced specified sums of money if the time had been sold. WHBT emphasizes its conviction that a new competing station would

result in curtailment of personnel, but when afforded opportunity to indicate the nature of the

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personnel changes, it simply reiterated that staff would have to be reduced. WHBT asserts that it has no information that the public service programming will not be carried out by the proposed station, and, indeed, the applicant's representations lead to the conclusion that the proposed station will serve the public interest.

14. Upon consideration of WHBT's contentions and the information furnished, the Commission is unable to conclude that WHBT has met the burden of pleading sufficient specific facts to show that another standard broadcast station cannot operate in Harriman, Tennessee, without loss or degradation of program service to the area. We restate our position set out in the Commission's decisions in *Tree Broadcasting Co.*, 1 RR 2d 15 (1963) and *Missouri-Illinois Broadcasting Co.*, 1 RR 2d 1 (1963) concerning pleadings requiring an economic issue. We do not require that a petitioner plead evidence, but it is necessary to submit more than a statement in general and speculative terms. The Commission requires that a petitioner allege specific factual information in sufficient detail to raise a substantial question as to the ability of the area involved to support another broadcast station without loss or degradation of service to the public. Absent an appropriate showing, including a showing of the specific relationship between any assumed losses in revenue to the withdrawal of particular programs or program service, the Commission cannot conclude that WHBT has raised an issue which would require a hearing. The request for the specification of a *Carroll* issue will therefore be denied.

15. The applicant contends that, should a hearing be required on the *Carroll* issue, WHBT's renewal application should be called up

for early comparative consideration with the applicant's proposal. In the light of the Commission's determination that a hearing is not necessary, there is likewise no necessity for hearing on WHBT's renewal.

16. WHBT requests the specification of an issue to determine whether the applicant is financially qualified to construct and operate the proposed station and whether its estimate of the expected operating revenues and expenses is reasonable. The petitioner contends that the applicant's estimates of expected operating revenues ($50,000) and operating expenses ($42,000) are unrealistic and, therefore, the Commission could not find the applicant financially qualified. The applicant contends that these estimates are reasonable and has submitted a detailed expense budget for its proposed station. With respect to the applicant's estimate of operating revenues, such issues will be specified only where there have been the proper preliminary allegations warranting such an inquiry. Absent a clear showing that the estimates of operating expenses are unrealistic, the Commission will not permit WHBT's judgment to be substituted for that of the applicant. WHBT reported revenues of $88,650 for the year 1963, and the applicant's estimate is less than half of this total. Since WHBT's contention is mere conjecture and unsupported by sufficient factual data, its request for a financial issue based on the applicant's allegedly unrealistic estimate of operating revenues will be denied. WHBT's request for a financial issue based on the applicant's alleged unrealistic estimate of operating expenses must also be denied.

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Funds of approximately $57,103 will be required for the construction and operation of the proposed station for a period of one year. The applicant has demonstrated that cash in the approximate amount of $30,000 is available and that net current assets are in excess of $70,000. It is clear, therefore, that the applicant's financial position is sufficient to enable him to construct and operate the proposed station for a period of one year without revenue. Accordingly, the Commission finds that the applicant is financially qualified. *Ultravision Broadcasting Company, et al.*, 5 RR 2d 343 (1965). WHBT's contentions concerning the applicant's estimate of operating expenses are not sufficient to raise a substantial and material question with respect to the applicant's financial qualifications. The request to place the applicant's financial qualifications in issue will be denied.

17. WHBT also requests the specification of an issue to determine whether the applicant, in view of his proposals as to staff and operating expenses, is qualified to operate his station in the manner proposed. WHBT contends that the applicant could not operate as proposed on his estimated expense figure of $42,000 and that, on the basis of this expense budget, the applicant could not adequately provide for seven employees, including a qualified engineer. The applicant, simultaneously with his opposition pleading, submitted an expense budget, in which he explained and itemized his expected operating expenses, including salaries to employees. The applicant was found to be financially qualified, under existing Commission policy, to construct and operate as proposed. The Commission finds that WHBT has not established a sufficient basis for questioning the applicant's staffing proposals and, therefore, the requested issue will not be specified.

18. The Scripps-Howard Broadcasting Company, licensee of Station WNOX, Knoxville, Tennessee, filed a letter on February 15, 1963, stating that the applicant's engineering exhibits indicated that the proposal would cause objectionable interference to Station WNOX. Scripps-Howard contends that, pursuant to the *KOA* case [*NBC, Inc. v. FCC*, 319 U.S. 239 (1943)] a hearing is required on

this issue and it is entitled to be made a party thereto. Station WNOX is licensed to operate on a frequency of 990 kilocycles with a power of 10 kilowatts, unlimited time, with a directional antenna at night. The applicant requests an authorization to operate on 970 kilocycles. The Commission's present technical standards do not recognize as objectionable interference between stations two channels removed.[1] Therefore, the Commission finds that the contention of WNOX is without merit. The Commission construes the WNOX letter as an implied request for a hearing which will be denied.

19. There remains no other substantial or material questions of fact raised in the petitioners' pleadings which would warrant an evidentiary hearing. The Commission finds that the applicant is legally, technically, financially and otherwise qualified to construct, own and operate the proposed station and that a grant of the above-captioned application would serve the public interest, convenience and necessity.

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[1] The WNOX renewal was granted October 28, 1964.

Accordingly, IT IS ORDERED, That the petitions to deny filed by Richard W. Holloway tr/as Dick Holloway Enterprises, licensee of Station WRKH, Rockwood, Tennessee, Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, and the First National Bank and Trust Company of Rockwood ARE DENIED, that the implied request for hearing by Scripps-Howard Broadcasting Company, licensee of Station WNOX, Knoxville, Tennessee, IS DENIED, and that the application of F. L. Crowder tr/as Harriman Broadcasting Co. IS GRANTED, subject to the conditions and specifications set forth in the construction permit.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

cc: Dick Holloway Enterprises
Harriman Broadcasting Company
Miller & Schroeder
Folkways Broadcasting Company, Inc.
First National Bank & Trust Co. (Rockwood, Tenn.)
Dempsey and Koplovitz
Scripps-Howard Broadcasting Co.
Smith and Pepper
Krieger and Jorgensen

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DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I dissent and vote for an evidentiary hearing. WHBT's petition to deny raises serious questions as to the applicant's (a) showing on ascertainment of community needs, (b) trafficking in licenses, and (c) misrepresentations involved in (a) and (b). I believe the applicant's response not only fails to resolve those questions but also creates disputes of fact requiring a hearing.

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CONCURRING STATEMENT OF COMMISSIONER WADSWORTH

Some of the questions posed in *Missouri-Illinois Broadcasting Co.*, 3 Pike & Fischer Radio Reg. 2d 232 (1964) are unreasonable and irrelevant to economic protests. Therefore, I find no fault with WHBT for not meeting the pleading standards set forth in that case. But even disregarding these unrealistic standards, I do not believe that WHBT has succeeded in making out a *prima facie* case of economic injury in the instant case. Therefore, I concur with the results reached by the Commission.

James J. Wadsworth

MEMORANDUM OPINION AND ORDER

Released March 3, 1967

By the Commission: Commissioner Bartley concurring in part and dissenting in part and issuing a statement; Commissioner Cox dissenting; Commissioner Wadsworth absent.

1. The Commission has before it the above-captioned and described application granted without hearing on January 12, 1966 (2 FCC 2d 320 released January 14, 1966) and the opinion of the United States Court of Appeals for the District of Columbia Circuit, *Folkways Broadcasting Company, Inc., v. Federal Communications Commission*, __ U.S. App. D.C. __, __ F.2d __, 8 Pike & Fischer R.R. 2d 2089, reversing and remanding the matter to the Commission for further proceedings. Also before the Commission are a motion for an order terminating the operation of WXXL, filed January 20, 1967, by Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, Crowder's opposition to the motion filed January 27, 1967, and WHBT's reply to Crowder's opposition, filed February 1, 1967.

2. In its opinion the Court directed the Commission to hold a hearing on the question raised by WHBT in a pre-grant petition to deny the application on whether the applicant has engaged in trafficking of broadcast authorizations and whether a grant of his present application would create another opportunity for such trafficking. The Court also directed that further proceedings should be held to resolve an additional question raised by WHBT in alleging that the establishment of another station in Harriman would result in a net degradation of service to the public, *Carroll Broadcasting Co. v. Federal Communications Commission*, 103 U.S. App. D.C. 346, 258 F.2d

440, 17 Pike and Fischer R.R. 2066 (1958). Consistent with the Court's mandate, the Commission will order a hearing in which these issues will be resolved.

3. The question raised in WHBT's motion to terminate the operation of WXXL which commenced pursuant to program test authority granted on August 11, 1966, is whether WXXL should be permitted to continue operation or whether, during the pendency of the hearing, the station should be ordered to cease operation.[1] WHBT contends, in substance, that the WXXL construction permit, having been granted without the hearing which the Court found

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[1] Program test authority was granted without prejudice to such action the Commission may deem warranted as a result of proceedings in *Folkways Broadcasting Company, Inc., v. FCC, supra.*

necessary, is illegal and void and that the program test authority granted pursuant thereto is also void. WXXL opposes the motion on the ground that WHBT has failed to seek a stay of the WXXL authorization during the pendency of the appeal, that service is being provided by WXXL in the public interest and that the continued operation of WXXL during the hearing would be consistent with Commission precedent (citing *WEAT-TV, Inc.*, 1 RR 2d 37, adopted July 24, 1963).

4. WHBT is thus seeking the termination of the WXXL operation during the hearing on the basis of its legal arguments rather than on the basis of any particular factual showing. We do not think that the public interest would be served by any such mechanistic approach. WHBT has raised serious questions concerning the effects of the competition by WXXL upon its broadcast operation and the public interest in this area, and these questions are to be fully explored in

the hearing. We appreciate that in view of the nature of the issue and the present posture of the matter, WHBT should not be subjected to significant adverse competitive consequences pending the outcome of the hearing. However, WHBT did not seek a stay of the Commission's grant to Harriman, and, thus, WXXL has been in actual operation during the last seven months. Rather than any automatic shutdown of this operation, we believe it reasonable that WHBT should make a showing that significant adverse competitive consequences have resulted (e.g., loss of a significant amount of advertising to WXXL or similar adverse developments).[2] Such a showing is peculiarly and readily within WHBT's knowledge. Yet no such showing has been made here. There is the possibility in a situation involving a grant of a second facility in some relatively small community that the entry of the second station does not result in the slightest competitive injury to the existing station but, rather, the latter's advertising revenues increase. We cite this only as a possibility and do not, of course, say that that is the case here, where only the hearing can resolve the substantial public interest questions raised. In view of the circumstances here, where WXXL has been in operation for a substantial period of time during which WHBT has been faced with the competitive pressures of a second station operating in Harriman, it is obviously appropriate to take action on a basis which rules out the above possibility, for if there has not been any significant adverse impact and no such impact develops at any point during the hearing, there is clearly no public interest served by terminating the station's operation. On the contrary, the public interest would be disserved by such action. We therefore conclude (i) that we should not act on any automatic basis but, rather, upon a factual showing of some significant adverse impact and (ii) that no such showing has been made here.

---

[2] By "significant adverse competitive consequences" we thus mean just that, and are in no way calling for the type of showing which must be made in the hearing in order to make the ultimate public interest judgment. See Court's opinion.

5. We have therefore determined upon the following course:

(i) To leave WXXL on the air but to grant it only a temporary authorization, subject to cancellation upon further order of the Commission. In this way, we will be in a position to take prompt action based upon any new developments or showing, including, of course, an immediate filing by WHBT along the lines delineated in paragraph 4.

(ii) In any event, to order an expedited hearing. We think that the course we have adopted is fully consistent with the Court's remand order and with the public interest, for it is designed to insure timely action taken on a reasonable and readily available factual basis rather than one made on inference or assumption, which might possibly be wholly at odds with the public interest applicable to these particular circumstances.

6. Except as indicated by the issues specified below, the applicant is qualified to own and operate WXXL as proposed. However, for the reasons indicated above, the Commission is unable to make the statutory finding that a grant of the application would serve the public interest, convenience and necessity. Therefore, the application will be designated for hearing on the issues specified below.

Accordingly, IT IS ORDERED, This 1st day of March, 1967, that, pursuant to the mandate of the United States Court of Appeals for the District of Columbia Circuit, *Folkways Broadcasting Company, Inc., v. FCC, supra,* and Section 309(e) of the Communications Act of 1934, as amended, the application IS DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the applicant has engaged in trafficking in broadcast authorizations.

2. To determine whether there are adequate revenues to support more than one standard broadcast station in the area to be served without a net loss or degradation to standard broadcast service to the area.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

IT IS FURTHER ORDERED, That Folkways Broadcasting Company, Inc., licensee of Station WHBT, IS MADE A PARTY to the proceeding.

IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of the evidence with respect to issues 1 and 2 shall be on the petitioner; that the burden of proof with respect to issue 1 shall be on the applicant and with respect to issue 2 shall be upon the petitioner.

IT IS FURTHER ORDERED, That, in the event of a grant of the application, the construction permit shall contain the following condition:

> Pending a final decision in Docket No. 14419 with respect to pre-sunrise operation with daytime facilities, the present provisions Section 73.87 of the Commission's Rules are not extended to this authorization, and such operation is precluded.

[384]

IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicant and party respondent herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

IT IS FURTHER ORDERED, That such hearing SHALL BE EXPEDITED by the Hearing Examiner and by the Review Board if exceptions are taken to the Initial Decision.

IT IS FURTHER ORDERED, That the applicant herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing, within the time and the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

IT IS FURTHER ORDERED, That the motion for an order terminating the operation of WXXL filed by Folkways Broadcasting Company, Inc., IS HEREBY DENIED, and that F. L. Crowder tr/as Harriman Broadcasting Company IS GRANTED temporary authority to continue operation of WXXL until further order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION*

Ben F. Waple
Secretary

---

*See attached Statement of Commissioner Bartley concurring in part and dissenting in part.

STATEMENT OF COMMISSIONER ROBERT T. BARTLEY CONCURRING IN PART AND DISSENTING IN PART

I concur in setting the application for hearing.

I dissent to permitting WXXL to operate while we have a hearing for the very purpose of determining whether the grant should have been made in the first place.

Additionally, I would require that the application for renewal of WHBT, which is due August 1, 1967, be consolidated in the proceeding to determine, in the event it is found pursuant to the *Carroll* issue that the community cannot support another station as contended by WHBT, which of the two proposals would better serve the public interest. *Herbert P. Michels*, 17 RR 557.

ORIGINAL FILE 424

SMITH, PEPPER, SHACK & L'HEUREUX
ATTORNEYS AT LAW
1101 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

E. STRATFORD SMITH
VINCENT A. PEPPER
THOMAS G. SHACK, JR.
ROBERT F. CORAZZINI
ROBERT W. HEALY
DONALD E. BILGER
MICHAEL L. GLASER
ROBERT D. L'HEUREUX

TELEPHONE
296-0600

RECEIVED
MAR 31 1967
OFFICE OF THE SECRETARY

March 31, 1967

APR 3 1967

Re: Docket No. 17255

Mr. Ben F. Waple, Secretary
Federal Communications Commission
Washington, D. C. 20554

17255

Dear Mr. Waple:

Transmitted herewith, on behalf of F. L. Crowder, tr/as, Harriman Broadcasting Company, are an original and 14 copies of a "Petition to Change Hearing Site from Washington, D. C. to Harriman, Tennessee" in connection with the hearing involving his application (Docket No. 17255, File No. BP-15122) for a construction permit for a new standard broadcast station to be operated at Harriman, Tennessee.

Should further information be desired in connection with this petition, please communicate with this office.

Very truly yours,

Donald E. Bilger

Donald E. Bilger

Enclosures (15)

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MAR 31 1967

F.C.C.
OFFICE OF THE SECRETARY
APR 3 1967

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING CO. (WXXL))
Harriman, Tennessee)
)
For Construction Permit)

Docket No. 17255
File No. BP-15122

Dockets
2nd A - 3/c
Orig & 14
3-31-67

To: The Chief Hearing Examiner

PETITION TO CHANGE HEARING SITE FROM WASHINGTON, D. C., TO HARRIMAN, TENNESSEE

Comes now F. L. Crowder, tr/as Harriman Broadcasting Co.,[1] by his attorneys, to request that the hearing in the above-entitled matter now scheduled to be held in Washington, D. C., be moved to Harriman, Tennessee, stating in support thereof as follows:

1. By Commission Memorandum Opinion and Order released on March 3, 1967, the application of Mr. Crowder was designated for expedited hearing upon three issues:[2]

> A. To determine whether the applicant has engaged in trafficking in broadcast authorizations.

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1. Mr. Crowder sometimes will be referred to herein as "Applicant", Folkways as "Petitioner", the Broadcast Bureau as "Bureau", and the Federal Communications Commission as "Commission".

2. Petitioner bears the burden of proceeding with the introduction of evidence with respect to Issues A and B. The burden of proof with respect to Issue A is on the Applicant, and with respect to Issue B upon Petitioner.

B. To determine whether there are adequate revenues to support more than one standard broadcast station in the area to be served without a net loss or degradation to standard broadcast service to the area.

C. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

By Order released that same date, all proceedings were scheduled to take place in the offices of the Commission in Washington, D. C.

3. Formal pre-hearing conferences were held on March 14, 23, and 24. On March 20 counsel for the Bureau, Petitioner and Applicant conferred outside the presence of the Hearing Examiner. As a result of the four meetings, the following facts appear of record.[3]

A. The so-called written case method or procedure will not be utilized in the trial of this case.

B. On April 11 Petitioner will cause to be delivered to the Examiner and to counsel whatever written material is available to it at that time which it intends to introduce into evidence.

C. A fourth formal pre-hearing conference is scheduled for April 12 in order to permit, *inter alia*, identification of witnesses intended to be called by any party.

D. Hearing is presently scheduled to commence in Washington on April 18.

E. Counsel for Petitioner has placed into the record his intention to call either ten or eleven Harriman witnesses, none of whom are or have been advertisers on WHBT and none of whom are or have been users of WHBT air time in other capacities. Essentially, all are now or have been associated with the management and operation of WHBT.

---

[3] Where intentions are stated, they are identified as such.

F. Petitioner has been requested on the record to supply for examination prior to trial by Applicant the original books of account for WHBT beginning with January 1, 1961, to date.[4] Counsel for Petitioner has not agreed to do so.

G. Petitioner has been requested on the record to supply for examination prior to trial by Applicant the WHBT composite week logs for the years beginning with 1961 to date. Counsel for Petitioner has not agreed to do so.

H. Petitioner has been requested on the record to supply for examination prior to trial by Applicant the WHBT Annual Financial Reports for the years beginning with 1961 to date. Counsel for Petitioner has not agreed to do so.

I. Anticipating that Petitioner will make a prima facie showing on the trafficking issue, Applicant intends to utilize the testimony of at least six Harriman witnesses, with the probability of several more, in this evidentiary area.

J. Petitioner proposes to take the depositions of Harriman witnesses who are now or who have been users of WHBT advertising or programming time. At the informal meeting of counsel, the number thereof was estimated by counsel for Petitioner as between twenty and twenty-four. Subsequently at a formal pre-hearing conference, it was represented that the number and identities of such Carroll issue witnesses were yet to be determined by Petitioner.

K. Applicant intends to oppose the taking of testimony on the Carroll issue by way of deposition because of the critical nature of the question toward which such evidence would be directed. Both the Hearing Examiner and Bureau counsel should be present when such testimony is elicited, a situation which would not be possible if depositions were utilized.

L. While the number and identities of Applicant's witnesses on the Carroll issue necessarily must be deferred until Petitioner either makes known prior to trial its witnesses and the gist of their proposed testimony or until Petitioner attempts to introduce such

---

4. The Petition to Deny the Crowder application was filed in 1962. It and subsequent pleadings filed by Petitioner contain summary financial data to support allegations of economic status and anticipated injury if the Crowder application is granted which include the years 1961, 1962, and 1963.

evidence during the hearing, Applicant does intend to utilize evidence of Harriman witnesses on the Carroll issue providing Petitioner carries its burden of proof.

4. Thusly, on the issue of trafficking alone the minimum number of Harriman witnesses to be called is sixteen.

5. The Carroll issue, however, poses a more serious problem in terms of the number of witnesses and involvement with written records because of the nature of the evidence empirically utilized in resolving such questions. The tap root position of Petitioner is alleged loss of advertising revenue which dictates in turn reduced, changed or eliminated programming and services which results in turn in detriment to the public. Applicant's view is diametrically opposed. Resolution of the issue requires evidence of financial stability or lack thereof, the sources of which are the books of original entry maintained by Petitioner. Should such records be required in Washington, the disruption of daily bookkeeping activity for the period involved is apparent. Equally clear is the probability of the need on the witness stand for the bookkeeper or others responsible for the entries contained in such records, which, if this should arise in Washington, would require a delay until that individual or those individuals could be produced here.

6. It is also quite likely that Petitioner will rely to some degree upon testimony of Harriman advertisers and Harriman users of WHBT program time. Should such witnesses be called by Petitioner, applicant intends to use between fifteen and twenty-five Harriman resident in this area. Should trial be held in Washington,

the expense involved in producing such testimony here is obvious. Further, the exigencies of trial wherein a written case procedure is not used generally result in unexpected requirements for witness and/or document production. In this instance, such witnesses and such documents are in Harriman. The procurement of that evidence in Washington unavoidably means delay of the hearing process, as well as undue expense to the parties.

7. Petitioner has injected into this matter allegations relating to Mr. Crowder's character. In this area, Applicant intends to call in excess of twenty-five Harriman residents.

8. In sum, except for the possibility that Petitioner may use the testimony of a non-Harriman engineering witness and a non-Harriman economic consultant, all known and anticipated witnesses in this case live and work in or near to Harriman. Except for printed evidence of a public nature, such as statistical data pertaining to the Harriman economy issued by governmental or quasi-governmental bodies, all documentary evidence is maintained in Harriman. The Carroll issue requires liberal evidentiary offerings of both varieties. Even under the written case procedure with ample pre-hearing time for counsel to examine direct case exhibits and pertinent underlying records to prepare cross-examination and rebuttal evidence, a hearing in Washington would be unnecessarily time consuming and expensive. Under the essentially oral procedure prevailing here, those problems are magnified. The expedition ordered by the Commission can be accomplished only by moving the hearing from Washington to the locale

wherein the people and the documents directly concerned with the issues are located.[5]

For these reasons, Applicant requests that the situs of the hearing in this matter be changed from Washington, D. C., to Harriman, Tennessee.

Respectfully submitted,

F. L. Crowder, tr/as

Donald E. Bilger

By /s/Donald E. Bilger
Donald E. Bilger

1101 17th Street, N. W.
Washington, D. C.

Smith, Pepper, Shack, & L'Heureux
His Attorneys

March 31, 1967

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5. Pending now before the Commission is a pleading filed by Applicant which requests an issue to determine upon a comparative basis, in the event it is found that the Harriman economy can support only one standard broadcast station, which of the two existing facilities (WXXL or WHBT) would better serve the public interest. The WHBT application for license renewal must be filed the first week in May.

CERTIFICATE OF SERVICE

I, Karen M. Walsh, a secretary in the law offices of Smith, Pepper, Shack & L'Heureux, hereby certify that on the 31st day of March, 1967, I have delivered copies of the foregoing "Petition to Change Hearing Site from Washington, D. C., to Harriman, Tennessee," to each of the following:

The Honorable Herbert Sharfman
Federal Communications Commission
Washington, D. C. 20554
Hearing Examiner

John B. Letterman, Esq.
Federal Communications Commission
Washington, D. C. 20554
Counsel for the Broadcast Bureau

John B. Kenkel, Esq.
Miller and Schroeder
808 Munsel Building
Washington, D. C. 20554
Counsel for Folkways Broadcasting Company, Inc. (WHBT)

Karen M. Walsh
/s/Karen M. Walsh
Karen M. Walsh

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ORIGINAL FILE

NEVILLE MILLER
ARTHUR H. SCHROEDER
JOHN B. KENKEL
JOHN P. BANKSON, JR.
WILLIAM M. BARNARD

LAW OFFICES
MILLER AND SCHROEDER
MUNSEY BUILDING
WASHINGTON, D. C. 20004

TELEPHONE
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APR 6 1967
F.C.C.
OFFICE OF THE SECRETARY

APR 7 1967

April 6, 1967

Secretary
Federal Communications Commission
Washington, D. C. 20554

In re: Harriman, Tennessee 970 kc Case
Docket No. 17255 ✓

Dear Sir:

On behalf of Folkways Broadcasting Company, Inc. (WHBT), party respondent in the hearing on the application of F. L. Crowder, tr/as Harriman Broadcasting Company, for a new AM station in Harriman, Tennessee (Docket No. 17255), we are filing herewith the original and 19 copies of an "Opposition to Petition to Change Locus of Hearing".

This pleading is addressed to the Honorable, Chief Hearing Examiner James D. Cunningham.

Very truly yours,

John B Kenkel

JOHN B. KENKEL

Enclosures

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APR 7 1967

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)) F. L. Crowder, tr/as) HARRIMAN BROADCASTING COMPANY) Harriman, Tennessee)) For Construction Permit)	DOCKET NO. 17255 File No. BP-15122

Dockets - 7
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4-6-6

TO THE HONORABLE, CHIEF HEARING EXAMINER JAMES D. CUNNINGHAM:

OPPOSITION TO PETITION TO CHANGE LOCUS OF HEARING

Comes now FOLKWAYS BROADCASTING COMPANY, INC. (WHBT), by its attorneys, and opposes the applicant's petition for a change in the locus of the hearing from Washington, D. C. to Harriman, Tennessee. In opposing the said petition, WHBT shows the following:

1. This proceeding involves the application of F. L. Crowder for a construction permit for a new station in Harriman, Roane County, Tennessee. The application has been designated for hearing agreeably with the provisions of Section 309(e) of the Communications Act of 1934, as amended, which in pertinent part provides that where a petition to deny raising substantial issues of fact has been filed or the petition and matters before the Commission demonstrate that there is a question as to whether a grant of the application would serve the public interest, the application cannot be granted until an evidentiary hearing has been held

in which the issues are heard and resolved. The Commission's initial view that a grant could be made without a hearing was overturned by the U. S. Court of Appeals, and the Commission was directed to hold a hearing and to resolve the outstanding issues before a valid grant could be made.[1]

2. The application was designated for hearing upon three issues by Memorandum Opinion and Order released March 3, 1967. The issues concern Crowder's qualifications to hold a broadcast authorization, *i.e.*, whether he has engaged in trafficking of broadcast authorizations,[2] whether in light of the matters concerning Crowder's proposed operation[3] a grant of the application would deleteriously affect existing service in Harriman and Roane County, and in light of the evidence adduced under these two issues whether a grant of the application would serve the public interest, convenience and necessity. The proceeding was ordered to be heard on an expedited basis. The hearing is presently scheduled to commence on April 18, 1967 in Washington, D. C.

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[1] *Folkways Broadcasting Company, Inc. v. F.C.C.*, Case No. 19,971, decided January 5, 1967.

[2] "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service. There may be a basis for reconciling the inconsistent representations in a manner which prevents disqualification of Crowder, but the subject needed examination at a live hearing. There is substance to the dissent of Commissioner Bartley, expressing his view that WHBT's petition to deny raised a serious question as to trafficking, requiring an evidentiary hearing to resolve the matter." (Slip Op., pp. 4-5, Footnote omitted).

[3] The "rate war" threat shown in the pleading record, *inter alia*.

3. Crowder has now petitioned for a field hearing. The premise of his request is that the witnesses whose testimony is expected to be elicited on either the applicant's part or WHBT's part live in or near Harriman and that such financial records as may be involved in WHBT's presentation under the so-called "Carroll" issue are in Harriman. With certain exceptions the assertion as to the residency of the witnesses and the place of the documents is correct, but Crowder overpleads the number of witnesses and the amount of documentary evidence which he

expects to have involved in the hearing sessions to be held in Washington, D. C. Compare, *e.g.*, Crowder's suggestion that WHBT might have some 24 Harriman witnesses in connection with the "Carroll" issue with Tr. 68 ff, where it was pointed out that the number of witnesses from Harriman who would be called by WHBT in the first instance to testify in Washington would be few and that additional witnesses whose testimony might be adduced would be examined by way of deposition.

4. It is submitted that the Commission's extant policy which must govern the disposition of Crowder's request is that except in extraordinary circumstances field hearings are not authorized except on revocation or renewal proceedings. This case is neither a revocation nor a renewal proceeding. To the extent that Crowder pleads that the number of witnesses either WHBT or the applicant might call under either of the issues is substantial in number, the Chief Hearing Examiner's observation in *Ottawa Broadcasting Corp.*, 3 R.R. 2d 609, 610 (1964), is the short answer:

> "[The Commission's processes] provide parties with adequate methods and means whereby, in circumstances similar to those here present, such testimony may be obtained and introduced into the record [by way of] depositions, interrogatories, etc. Applicant's contention that the latter procedures would not serve as an adequate substitute for holding hearing sessions in the area to be served is without merit and is rejected."

5. In view of the fact that the hearing date has been established on the basis of a Washington, D. C. hearing, a change in locus might well occasion problems affecting such hearing schedule. See Examiner Sharfman's observation at Tr. 83.

6. We don't think it necessary to extend unduly this opposition, particularly in view of such precedent as Ottawa Broadcasting Corp., supra, and the other cases there cited by the Chief Hearing Examiner.

WHEREFORE, the premises considered, it is respectfully submitted that Crowder's petition for a field hearing in this case should be denied on the ground that good and sufficient cause has not been shown, at least at this juncture, to warrant a grant of authorization to convene the hearing in the above-entitled proceeding in Harriman, Tennessee. And, the within party requests such other and further relief as may be appropriate.

Respectfully submitted,

FOLKWAYS BROADCASTING COMPANY, INC.

By: MILLER AND SCHROEDER
Its Attorneys

Arthur H. Schroeder
/s/ Arthur H. Schroeder
ARTHUR H. SCHROEDER

John B Kenkel
/s/ John B. Kenkel
JOHN B. KENKEL

808 Munsey Building
Washington, D. C. 20004

April 6, 1967

CERTIFICATE OF SERVICE

I, Kathlyn Anne Crittenden, hereby certify that I have, this 6th day of April, 1967, sent by first class United States mail, postage prepaid, a copy of the foregoing "Opposition to Petition to Change Locus of Hearing" to the following:

Honorable Herbert Sharfman
Hearing Examiner
Federal Communications Commission
Room 6347, New Post Office Building
Washington, D. C. 20554

John B. Letterman, Esquire
Hearing Division, Broadcast Bureau
Federal Communications Commission
Room 7517, New Post Office Building
Washington, D. C. 20554

Donald E. Bilger, Esquire
Smith, Pepper, Shack & L'Heureux
1101 Seventeenth Street, N. W.
Washington, D. C. 20036
Counsel for F. L. Crowder, tr/as
Harriman Broadcasting Company

Kathlyn Anne Crittenden
/s/ Kathlyn Anne Crittenden
Kathlyn Anne Crittenden

Original ORIGINAL FILE

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APR 6 1967

OFFICE OF THE SECRETARY

APR 7 1967

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY (WXXL)) DOCKET NO. 17255
Harriman, Tennessee) File No. BP-15122
)
For Construction Permit)

Dockets - 7
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Orig + 19
4-6-67

TO: The Chief Hearing Examiner

OPPOSITION OF BROADCAST BUREAU TO "PETITION TO CHANGE HEARING FROM WASHINGTON, D.C., TO HARRIMAN, TENNESSEE

F. L. Crowder, tr/as Harriman Broadcasting Company (WXXL), by petition filed March 31, 1967, requests a change of venue. The Broadcast Bureau opposes WXXL's petition.

1. WXXL asks that the hearing in this matter be held at Harriman, Tennessee. WXXL states that it anticipates calling a large number of witnesses on its own behalf, and that petitioner, Folkways Broadcasting Company, Inc. (WHBT) has evidenced its intention of eliciting evidence through an equal number of witnesses living at or in the vicinity of Harriman. In these circumstances, WXXL contends, it is necessary that the hearing be held in the field.

2. The Bureau opposes this request. Hearing in cases of this nature is appropriately held in Washington, D. C. In this connection, it is noted that the Commission did not specify a field hearing in its order of designation, though it was with knowledge of the areas of inquiry traditionally involved in proceedings of this nature. This is not a revocation or renewal case, where, by custom and practice, hearings are held in the community of station location. Moreover, recent hearings in cases such as this have been held in Washington, D. C., without prejudice to the parties-litigant. See Rice Capital Broadcasting Co., 4 FCC 2d 592 (1966).

In light of the foregoing considerations, the Broadcast Bureau urges denial of WXXL's request for a field hearing.

Respectfully submitted,
George S. Smith
Chief, Broadcast Bureau

P. W. Valicenti
by P. W. Valicenti
Acting Chief, Hearing Division

John B. Letterman
John B. Letterman
Attorney
Federal Communications Commission

CERTIFICATE OF SERVICE

Joyce G. Cox, a secretary in the Hearing Division, Broadcast Bureau, certifies that she has this 6th day of April, 1967, sent by regular United States mail, U. S. Government frank, copies of the foregoing "Opposition of Broadcast Bureau to 'Petition to Change Hearing from Washington, D. C., to Harriman, Tennessee'" to:

Donald E. Bilger, Esquire
1101 17th Street, N. W.
Washington, D. C. 20036
Counsel for Harriman Broadcasting Company

John B. Kenkel, Esquire
Miller & Schroeder
808 Munsey Building
Washington, D. C. 20004
Counsel for Folkways Broadcasting Company, Inc.

Joyce G. Cox
Joyce G. Cox

[452]

ORDER

Released: April 10, 1967

The Chief Hearing Examiner having under consideration a petition by the applicant in the above-entitled proceeding, filed March 31, 1967, requesting that the site heretofore designated for the hearing be changed from Washington, D. C., to Harriman, Tennessee; and oppositions by the respondent, Folkways Broadcasting Company, Inc. (WHBT), and by the Commission's Broadcast Bureau;

IT APPEARING, that the instant proceeding involves neither revocation of a broadcast license nor an application for broadcast license renewal; thus, petitioner's request contemplates a departure from established Commission policy of limiting field hearings to broadcast renewal or revocation matters, except in special circumstances not here present;

IT APPEARING FURTHER, that the Commission, in its Rules, provides adequate methods and means, viz., depositions, interrogatories, etc., whereby the type of evidence petitioner desires of local witnesses may be obtained without transferring the hearing to Harriman, Tennessee (*Ottawa Broadcasting Corp.*, 3 R.R. 2d 609 [1964]);

IT APPEARING FURTHER, that, as urged by the Bureau, "* * * recent hearings in cases such as this have been held in Washington, D. C., without prejudice to the parties-litigant" (*Rice Capital Broadcasting Co.*, 4 FCC 2d 592 [1966]);

IT APPEARING FURTHER, that "good cause" for departure from the established policy aforementioned is not shown;

ity to WXXL. Subsequently, however, after WXXL had been directed to cease operation, the Court stayed the effectiveness of its order and that of the Commission until May 23, 1967, "to afford the

ACCORDINGLY, IT IS ORDERED, this 7th day of April, 1967, that the applicant's petition for field hearing in this proceeding is denied.

FEDERAL COMMUNICATIONS COMMISSION,

James D. Cunningham
Chief Hearing Examiner

Ben F. Waple
Secretary

ORDER

Adopted May 10, 1967; Released May 16, 1967

By the Commission: Commissioner Bartley dissenting; Commissioner Wadsworth absent.

1. The Commission has before it the opinion of the United States Court of Appeals for the District of Columbia Circuit in *Folkways Broadcasting Company, Inc. v. Federal Communications Commission*, decided April 26, 1967, in which the Court held improper the Commission's grant of temporary authority to WXXL; the Commission's order of May 1, 1967, directing that WXXL cease operation; and the Court's order of May 3, 1967, staying the effectiveness of its own earlier action and that of the Commission.

2. In the order designating this case for hearing, the Commission directed that the proceeding be expedited. In the meantime WXXL was allowed to continue operating on facilities which had been constructed pursuant to an authorization that was later set aside by the

Court.[1] On petition for a writ of mandamus filed by Folkways, the Court held that there was no basis for a grant of temporary authority to WXXL. Subsequently, however, after WXXL had been directed to cease operation, the Court stayed the effectiveness of its order and that of the Commission until May 23, 1967, "to afford the Commission an opportunity to render its decision."

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[1] *Folkways Broadcasting Co. v. Federal Communications Commission,* __ F.2d __; 8 RR 2d 2089 (1967).

[554]

3. In light of this action and consistent with our intent that the case be expedited, we find that due and timely execution of our functions imperatively and unavoidably require that, immediately upon its closing, the Examiner certify the record to the Commission for a final decision. Expedition also requires that the parties file their proposed findings 15 calendar days after the date the record is closed.

Accordingly, IT IS ORDERED, That upon the closing of the record it be certified immediately to the Commission for final decision and that the parties hereto shall file their proposed findings of fact and conclusions of law not later than 15 days after the closing of the record.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

BLACKBURN - HAMILTON COMPANY

TO: ✓ Jim Blackburn
CC: Ray Hamilton, Bill Stubblefield
FROM: Cliff Marshall

646

August 12, 1955

SUBJECT: WDEH, Sweetwater, Tennessee

This is a ~~1 KW~~ 500 watts daytimer on 800 kcs. The station was built in and went on the air in February, 1955. It has no network. They have UP at $32.50 per week. There are four full-time staffers and two part-time staffers. The Manager makes $75.00 per week. The property is located on Highway 11, one miles from downtown Sweetwater on eight acres of land. The building is of brick construction and assets amount to between $35 and $40 thousand.

It has brand new Gates equipment with Ampex recorders and studios in nearby Madisonville, Tennessee for which they pay no rent. They have a 260 ft. Windcharger tower.

Sweetwater is 45 miles south of Knoxville and 60 miles north of Chattanooga on Highway 11. It is in a rich Tennessee valley and is one of the outstanding tobacco markets in that area. Only competition is one weekly newspaper, the Valley News. Sweetwater is located in Monroe county with a population of 24,513. The city population is 4,200 and the town has some industry but primarily is agricultural. There are no competitive stations and Sweetwater is surrounded by three small communities where they also sell time.

	Bank Deposits
February	319.65
March	2,204.40
April	3,711.66
May	4,013.43
June	4,191.91
July	3,672.02
	18,113.07

~~Ixhaxs~~ The station is priced at $50,000 but I am sure he will take in the neighborhood of $40 to $45 thousand to the right party. Terms can be arranged. Contact is Freeman Crowder, WHBT, Harriman, Tennessee.

Federal Communications Commission
Docket No. 12255 Exhibit No. Crowder 31
Presented by Crowder
Disposition: Identified ✓
Received
Rejected
Reporter Carter
Date 5/15/67

The undersigned

Seller, hereby employs and appoints Blackburn-Hamilton Company, as Seller's exclusive Agent and Attorney in Fact, in Seller's name, and on Seller's behalf, to negotiate for and sell, subject to the approval of the Federal Communications Commission

100% (One Hundred percent) of Radio Station WHBT, Harriman, Tennessee,

xx at a purchase price which shall be satisfactory to Seller. The employment herein provided shall continue for a period of 120 days from the date hereof. The compensation to Blackburn-Hamilton Company, shall be five (5%) per cent of the gross price on any sale negotiated hereunder, payable at Washington 5, D. C. office not later than 20 days after the date of such consent or approval by the Federal Communications Commission to the transfer of the license of such station. Blackburn-Hamilton Company is to make an appraisal for sales purposes. The cost of this appraisal shall be $ none to be paid by the Seller together with and in addition to the commission stated above. This appraisal fee is payable only upon Federal Communications Commission approval and the consummation of a sale, otherwise this expense is paid by Blackburn-Hamilton Company. Seller agrees in the event of execution of a sale agreement to use its best efforts to consummate such sale and to procure approval thereof by said Commission.

Blackburn-Hamilton Company agrees to use its best efforts and its complete facilities to procure a sale of such station and to make a confidential national survey of prospective buyers, to procure national advertising if deemed necessary by Blackburn-Hamilton Company and to conduct in Seller's behalf all negotiations necessary to conclude a satisfactory sale of the station. Blackburn-Hamilton Company, in the event of the execution of a sale agreement agrees, in cooperation with the Seller's attorney, to review and assist in the preparation of data for exhibits, documents and other matters appropriate to procure the consent of the Federal Communications Commission to such sale. All expenses incurred by Blackburn-Hamilton Company, with the exception of transfer of control costs, shall be borne by it.

Seller agrees during the life of this agreement that it will deal exclusively through Blackburn-Hamilton Company, and Seller will not offer or sell such station directly or through any other agency and that all negotiations for sale and inquiries regarding sale will be referred to Blackburn-Hamilton Company. Blackburn-Hamilton Company agrees to submit and refer to Seller any proposal received for sale of the station for consideration by Seller and approval or rejection by Seller will be promptly given.

In the event of the execution of a sale agreement, should the Purchaser be changed for any reason, the Seller shall pay Blackburn-Hamilton Company, as compensation five (5%) per cent of the gross price of any sale consummated with such other Purchaser. Seller shall pay to Blackburn-Hamilton Company five (5%) per cent of the price on any sale, whether made during the term of this employment or within one year thereafter by Seller to any Purchaser suggested or referred to Seller during the life of this agreement.

Dated June 22, 1955

Harriman Broadcasting Co., Inc.

L. L. Crowder, Seller

BLACKBURN-HAMILTON COMPANY

By Clifford Marshall
Clifford Marshall

Federal Communications Commission
Docket No. 17255 Exhibit No. WHBT
Presented by WHBT #16
Disposition: Identified ✓ / Received ✓ / Rejected
Reporter Castagna
Date 5-15-67

WHBT-16

Radio Station WHBT AM · XX

THE HARRIMAN BROADCASTING COMPANY, XXX

F. L. CROWDER
Owner & Manager

HARRIMAN, TENNESSEE

June 24th
1955

Mr. Clifford Marshall
Blackburn-Hamilton Company
Washington, D. C.

Dear Cliff:

Inclosed, you will find the signed agreements Glad to hear from you. The only way I will sell the stations is for cash.

Would rather you didn't come down until after the 4th. Best regards.

Yours very truly,

F L Crowder
F. L. Crowder

Federal Communications Commission
Docket No. 17255 Exhibit No. WHBT #17
Presented by WHBT
Disposition: Identified ✓
Disposition: Received ✓
Disposition: Rejected
Reporter Castagno
Date 5-15-67

WHBT-17

JA 301

The undersigned 714

Seller, hereby employs and appoints Blackburn-Hamilton Company, as Seller's exclusive Agent and Attorney in Fact, in Seller's name, and on Seller's behalf, to negotiate for and sell, subject to the approval of the Federal Communications Commission

100% (One Hundred Percent) of Radio Station WDEH, Sweetwater, Tennessee,

~~xx~~ at a purchase price which shall be satisfactory to Seller. The employment herein provided shall continue for a period of 120 days from the date hereof. The compensation to Blackburn-Hamilton Company, shall be five (5%) per cent of the gross price on any sale negotiated hereunder, payable at Washington 5, D. C. office not later than 20 days after the date of such consent or approval by the Federal Communications Commission to the transfer of the license of such station. Blackburn-Hamilton Company is to make an appraisal for sales purposes. The cost of this appraisal shall be $ none to be paid by the Seller together with and in addition to the commission stated above. This appraisal fee is payable only upon Federal Communications Commission approval and the consummation of a sale, otherwise this expense is paid by Blackburn-Hamilton Company. Seller agrees in the event of execution of a sale agreement to use its best efforts to consummate such sale and to procure approval thereof by said Commission.

Blackburn-Hamilton Company agrees to use its best efforts and its complete facilities to procure a sale of such station and to make a confidential national survey of prospective buyers, to procure national advertising if deemed necessary by Blackburn-Hamilton Company and to conduct in Seller's behalf all negotiations necessary to conclude a satisfactory sale of the station. Blackburn-Hamilton Company, in the event of the execution of a sale agreement agrees, in cooperation with the Seller's attorney, to review and assist in the preparation of data for exhibits, documents and other matters appropriate to procure the consent of the Federal Communications Commission to such sale. All expenses incurred by Blackburn-Hamilton Company, with the exception of transfer of control costs, shall be borne by it.

Seller agrees during the life of this agreement that it will deal exclusively through Blackburn-Hamilton Company, and Seller will not offer or sell such station directly or through any other agency and that all negotiations for sale and inquiries regarding sale will be referred to Blackburn-Hamilton Company. Blackburn-Hamilton Company agrees to submit and refer to Seller any proposal received for sale of the station for consideration by Seller and approval or rejection by Seller will be promptly given.

In the event of the execution of a sale agreement, should the Purchaser be changed for any reason, the Seller shall pay Blackburn-Hamilton Company, as compensation five (5%) per cent of the gross price of any sale consummated with such other Purchaser. Seller shall pay to Blackburn-Hamilton Company five (5%) per cent of the price on any sale, whether made during the term of this employment or within one year thereafter by Seller to any Purchaser suggested or referred to Seller during the life of this agreement.

Dated June 22, 1955

Harriman Broadcasting Company, Inc.,
J. J. Crowder, Seller

BLACKBURN-HAMILTON COMPANY
By Clifford Marshall
Clifford Marshall

[illegible] Communications Commission
Docket No. 17255 Exhibit No. WHBT #25
Presented by WHBT
Disposition { Identified
Received ✓
Rejected
Reporter Castagna
Date 5-15-67

WHBT-25

Files

Radio Station **WHBT** AM · FM

THE HARRIMAN BROADCASTING COMPANY, INC.

F. L. CROWDER
Owner & Manager

HARRIMAN, TENNESSEE

September 27th
1955

Mr. Clifford Marshall
Washington, D. C.

Dear Cliff:

Inclosed, you will find the information that you requested.

When you sell WHBT it should be understood that there will be no accounts payable or receivable. Nor will the sale include the bank account or notes receivable. Hope to hear from you soon.

Yours very truly,

F. L. Crowder

F. L. Crowder

Federal Communications Commission

Docket No. 17255 Exhibit No. WHBT #2

Presented by WHBT

Disposition
- Identified ✓
- Received
- Rejected

Reporter Castagna

Date 5-15-67

JA 303

ORIGINAL
FILE
JTB

SMITH, PEPPER, SHACK & L'HEUREUX
ATTORNEYS AT LAW
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

E. STRATFORD SMITH
VINCENT A. PEPPER
THOMAS G. SHACK, JR.
ROBERT F. CORAZZINI
ROBERT W. HEALY
DONALD E. BILGER
MICHAEL L. GLASER
ROBERT D. L'HEUREUX

TELEPHONE
296-0600

RE VED
JUN 12 1967
F.C.C.
OFFICE OF THE SECRETARY

JUN 13 1967

837

June 12, 1967

17255

Mr. Ben F. Waple, Secretary
Federal Communications
Commission
Washington, D. C. 20554

Dear Mr. Waple:

Transmitted herewith, on behalf of F. L. Crowder tr/as Harriman Broadcasting Company, are an original and nineteen copies of "Proposed Findings of Fact and Conclusions of Law" in connection with the hearing involving his application (Docket No. 17255) for a construction permit for a new standard broadcast station to be operated on 970 kilocycles in Harriman, Tennessee, with 500 watts power, daytime only.

Should further information be desired in connection with this matter, please communicate with this office.

Very truly yours,

Donald E. Bilger

Donald E. Bilger

Enclosures (20)

ORIGINAL 2

RECEIVED
JUN 12 1967
F.C.C.
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY (WXXL)) DOCKET NO. 17255 ✓
Harriman, Tennessee) File No. BP-15122
)
For Construction Permit)

6-12-67

APPEARANCES

Donald E. Bilger, Esq. (Smith, Pepper, Shack & L'Heureux), on behalf of F. L. Crowder, tr/as Harriman Broadcasting Company; John B. Kenkel, Esq. (Miller & Schroeder), on behalf of Folkways Broadcasting Co., Inc.; and John B. Letterman, Esq., on behalf of the Broadcast Bureau.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This proceeding involves the application of F. L. Crowder, tr/as Harriman Broadcasting Company, for authority to construct and operate Radio Station WXXL on 970 kilocycles in Harriman, Tennessee, with 500 watts power, daytime only. The application was filed with the Commission on October 4, 1961, and amended on November 13, 1961. On December 10, 1962, Folkways, the licensee of Radio Station WHBT in Harriman, filed a Petition to Deny the Crowder application. After a series of subsequent pleadings, the Commission without hearing granted the application on January 12, 1966. Folkways appealed to the United States Court of Appeals

for the District of Columbia circuit, arguing that its allegations of character deficiencies on the part of Crowder and the economic questions Folkways raised required an evidentiary hearing for resolution as contrary to a decision of the pleadings.

2. In the meantime, pursuant to his construction permit, Crowder constructed Station WXXL, receiving program test authority on August 11, 1966. WXXL began programming on August 12, 1966. On January 5, 1967, the Court reversed and remanded, indicating that the matters raised required a hearing for resolution. Folkways then requested the Commission to order WXXL off the air pending determination through the hearing process of the validity of its allegations. The Commission declined so to do, and ordered an expedited hearing. Folkways again appealed to the Court for an order compelling the Commission to revoke the temporary authority under which Station WXXL was permitted to operate. On April 26, 1967, the Court of Appeals found no basis for the Commission's grant of temporary operating authority, and on May 1, 1967, the Commission directed WXXL to go off the air as of the end of the broadcast day on May 3, 1967. Subsequent stays by the Court of Appeals and the United States Supreme Court have permitted continued operation of WXXL through August 15, 1967, or until a decision by the Commission.

3. The March 3, 1967, hearing order designated the following issues:

A. To determine whether the applicant has engaged in trafficking in broadcast authorizations.

B. To determine whether there are adequate revenues to support more than one standard broadcast station in the area to be served without a net loss or degradation to standard broadcast service to the area.

C. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity.

Pre-hearing conferences were held on March 14, March 23, March 24, April 12, and May 5, 1967. Hearing commenced on May 8, 1967, and continued through May 22, when the record was closed. On the latter date, the record was certified to the Commission pursuant to the Commission order of May 10. Proposed findings were ordered to be filed within fifteen days after the date the record was closed.*

THE TRAFFICKING ISSUE

4. Mr. Crowder has had ownership interests in three broadcast facilities during the period from 1946 to 1964. For the ten-year period from 1946 to 1956, he owned a part or all of Station WHBT, Harriman, Tennessee. From 1954 to 1956, he owned WDEH in Sweetwater, Tennessee, and from 1956 to 1964, he had a fifty percent interest in WLIV, Livingston, Tennessee. (Crowder Exhibit No. 33).

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* At the request of Folkways, the date for filing Findings of Fact and Conclusions of Law was postponed until June 12, 1967.

WHBT - On September 10, 1946, Harriman Broadcasting Co., Inc., in which Crowder owned 6.666% filed an application for a construction permit. Pursuant to Commission grant on January 23, 1947, the station was consturcted, program test authority issuing on May 5, 1947. On July 28, 1950, Crowder purchased the ownership interests of the other stockholders for $20,000, and on December 31, 1954, he began to do business as an individual proprietorship. He maintained that status as to WHBT until July 1, 1956, when, for $80,000, he sold to Folkways Broadcasting Company, Inc., a corporation then composed of Messrs. McDaniel, Tubb and Snow.[1/] The original cost of the real estate, transmitting equipment, tower, ground system and studio and office equipment was $53,102.70. He was listed as both General Manager and Station Manager of WHBT on the 1955 renewal of license application for WHBT, and stated on the application as his reason for requesting assignment of the license to Folkways that he wished at that time to retire from the broadcasting business in Harriman. (Crowder Exhibit No. 33; Official Notice Material - WHBT License File No. 1).

[1/] By September 27, 1961, Kenneth J. Crosthwait had acquired 100% of Folkways although he had no ownership interest in Folkways when Crowder sold WHBT. (Official Notice Material - WHBT Ownership Files).

WDEH - On June 9, 1954, Crowder, doing business as The Harriman Broadcasting Co., Inc., requested a construction permit for a standard broadcast station in Sweetwater, Tennessee. After a grant On September 15, 1954, he was issued program test authority on February 4, 1955. On September 5, 1956, this facility was sold to WDEH, Inc., for $52,500. Its original cost was $31,147.50, with a replacement value at the time of assignment of $36,852.20. Crowder stated on the application as his reason for selling that he wished to withdraw at that time from the broadcasting business in Sweetwater. (Crowder Exhibit No. 33; Official Notice Material - WDEH License File No. 2).

WLIV - On May 3, 1956, the Commission granted a construction permit to Crowder and R. H. McCoin (Crowder's brother-in-law), d/b/a Audio Broadcasters, for a standard broadcast station to be operated in Livingston, Tennessee. Each individual had placed $7500 into the capital structure and each held a fifty percent interest in the company. On November 26, 1956, the Commission issued a license for the station. As of January 1, 1958, the net worth of Audio Broadcasters was listed with the Commission as $33,254.50. The application for license renewal of WLIV filed with the Commission on May 2, 1961, listed the net worth as $36,586.28, with Crowder being identified as General Manager and McCoin as Station Manager. On May 29, 1964, Crowder sold his fifty percent interest to McCoin for $50,000, and McCoin valued WLIV on his balance sheet after acquisition of Crowder's interest as $100,000. The reason stated to the Commission for the requested transfer of control was that McCoin wished to dissolve the partnership of McCoin and Crowder. McCoin stated that he was active in the day-to-day operation of the station, that he offered to purchase Crowder's interest for $50,000, and thought the offer to be a reasonable one. (Crowder Exhibit No. 33; Official Notice Material - WLIV License File No. 2).

FOLKWAYS' CASE

5. Folkways called several witnesses who testified in connection with the trafficking issue. One such was Harry Thomas Burn, a resident of Rockwood.[2] Burn is a banker and an attorney licensed to practice in Tennessee. Until January, 1965, he was President and manager of the First National Bank and Trust Company of Rockwood, as well as a director and stockholder thereof. He presently is the Chairman of the Board, Trust Officer, a member of the Executive Committee, a stockholder and a director. He effectively is in control of that bank and its branches in Harriman and Kingston. (Tr. 367,369, 404).

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[2] Rockwood is eight to ten miles from Harriman. Kingston is ten miles from Harriman, and it is approximately eleven to twelve miles between Rockwood and Kingston. The three communities form a triangle. (Tr. 418,426).

6. Burn testified that when Crowder owned WHBT, that facility maintained a studio in the building occupied by Burn's bank in Rockwood, and that he knew Crowder from that contact as well as "socially, casually". (Tr. 369-370, 378). In 1961, Burn's bank purchased from Crowder for the then unpaid balance and without recourse the purchase money note Crowder held as a result of selling WHBT in 1956.[3/] (Tr. 381, 383, 386). He said that in the Spring of 1957 at about 10:00 A.M., he had a conversation with Crowder in the lobby of the bank building in Rockwood during which Crowder told him that the way to make money on radio stations was to get licensed, build a good volume of gross income "... by implication anyway, you had to, through a subsidy, and then sell the station". He also testified that Crowder told him that his (Crowder's) policy was to go into a town which had no radio station, and that McMinnville was an example of such virgin territory. (Tr. 379, 381, 431-433, 450, 461-462).

[3/] Burn did not admit that the Crowder note was purchased at the instigation of Kenneth J. Crosthwait, but stated that "I think Mr. Crowder had been negotiating a sale to me of the note at times before that". (Tr. 388-389, 399, 407, 482). After the bank bought the Crowder note, it was paid off in full from operating earnings by Folkways at the rate of $500 per month. (Tr. 394, 401, 456, 460).

7. Burn testified that after Crowder had filed his application for WXXL in Harriman, Crowder stated to Burn that his reasons for doing so were the change to a higher frequency by Folkways in operating WHBT and the excessive number of tubes or different tubes used by Folkways. Crowder felt according to Burn, that these matters would cause serious financial difficulty for Folkways. (Tr. 381-382). Burn stated that he has had conversations over the years with Crowder, although not with reference to radio stations, that Burn "... visited with him (Crowder) occasionally, more socially than business, of course, but I kept contacts with him". (Tr. 378, 380, 382).

8. Burn admitted that no one was present except himself and Crowder at the two Crowder conversations regarding radio stations and policy about which Burn testified. This was likewise true about any conversation Burn testified that he had with Crowder. (Tr. 432, 436, 438, 472).

9. On cross-examination, Burn testified that he knew Crosthwait some years before Crosthwait came to Harriman as an employee of Folkways in 1957. (Tr. 383, 782). Burn's bank had loaned funds and advanced lines of credit to Crosthwait in order for Crosthwait to purchase 100% control of Folkways.[4/] (Tr. 405-406, 783-785). Over the years, since then, Burn's

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[4/] Burn's bank also had loaned monies to Messrs. Tubb and Snow when they owned Folkways. (Tr. 383-384).

bank has continued to lend money to Crosthwait. (Tr. 408). His bank re-financed Folkways twice since the bank bought the Crowder note in 1961, advancing between fifty and sixty thousand dollars to Crosthwait and his associates. Folkways' present debt to Burn's bank is in excess of $23,000, and Burn's bank is committed to lend up to $15,000 more to Folkways to enable it to acquire an FM station in Harriman.[5/] Burn admitted that his interest in preventing WXXL from being established in Harriman stems from the position of his bank as a lender of funds to Folkways.[6/] (Tr. 392, 393, 401, 444, 460, 465, 475).

10. Burn is also in the radio business with Crosthwait. WOVE, Inc., is the licensee of Station WOVE, Welch, West Virginia. Its stock is held principally by Crosthwait, who owns 68 2/3 interest, and by Burn, who holds 17.1%. Burn is a director and is the secretary-treasurer of the licensee. In addition, Burn's bank has loaned money to Messrs. Brown and Fulcher, two of the original principals of WOVE, Inc.[7/] (Tr. 408-417, 430, 439, 440-443, 475).

5/ Folkways has an application to acquire such a facility now pending before the Commission.

6/ Burn's bank filed a Petition to Deny the Crowder application, but was denied standing by the Commission. (Tr. 395-397).

7/ Fulcher has since been replaced as a stockholder by Crosthwait's brother, Donald Crosthwait. (Tr. 791-793).

Kenneth I. Crosthwait

11. Crosthwait is the principal owner of Folkways, having 70% stock interest therein. Grant Roberts, ex-Station Manager of WHBT, and William Carrigan, the present WHBT Station Manager, each owns 15% for which Crosthwait received $30,000. Crosthwait is President and General Manager of WHBT, and a director of the license. He is also President and General Manager of Station WOVE in Welch, West Virginia, which is 200 to 225 miles from Harriman, as well as a director of that licensee. He has lived in Bluefield, near Welch, since September, 1964, and spends most of his time there.[8/] (Tr. 637, 776-777, 788-793, 869-872, 901).

12. Although Crosthwait was used as a witness principally as a proposed conduit for introduction of WHBT financial statistics, he did testify that he had business relationships with Burn prior to 1961, and that he assumed he borrowed $8000 from Burn to buy out Snow's stock interest in Folkways. (Tr. 785). He also stated that in 1961 it was his desire to have Burn purchase the Crowder note in order that WHBT could be refinanced. To that end, Crosthwait approached Crowder to

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[8/] From September, 1964, to August, 1966, Crosthwait spent 90% of his time in Welch. From the latter date to February, 1967, about 50% of his time was spent in Welch. (Tr. 712-714).

sell the Crowder note to Burn, and arranged for Crowder to go to Burn's bank for that purpose. After Burn bought the note, it was paid by Folkways at the rate of $500 per month. (Tr. 777-787, 1257-1258).

Edgar B. Willis

13. Willis presently is employed as a salesman for Station WBNT in Oneida, Tennessee. He has been there in that capacity twice, the first time for about eighteen months beginning about November, 1960. He then worked at WHBT for Crosthwait from May, 1962, until the Spring of 1964. He resumed his employment in Oneida in 1964, and has remained there since. (Tr. 576-578).

14. He testified that during his first employment at WBNT, Walter Scarbrough was the manager of that station, and that he and Scarbrough daily drove together from Kingston to Oneida and back.[9/] During such trips, he and Scarbrough had conversations about Crowder's proposed Harriman station, one such conversation having occurred in the Spring of 1962. At that time, Willis testified that Scarbrough said the rates of the proposed Harriman facility would probably be quite a bit lower than those charged by WHBT, perhaps by as much as 50%. (Tr. 578-579, 594, 599, 610-611).

[9/] The distance from Kingston to Oneida is some sixty miles. (Tr. 578).

Jack C. Harvey

15. Jack C. Harvey is an associate of Blackburn & Company, Inc., media brokers. Through him was introduced from the agency 's WHBT and WDEH files listing agreements whereby Crowder had listed WHBT and WDEH for sale with the Blackburn agency on June 22, 1955. The Blackburn agency file for Station WLIV for the period from 1956 through 1964 inclusively contained no correspondence directed to or received from Crowder. (Tr. 995-997, 1003, 1016, 1029-1030).

C. R. Black

16. Black was Superintendent of the Harriman school system from 1938 to 1964 when he retired. (Tr. 1736-1737). He wrote a letter on the letterhead of the school system, directed to Crowder under date of October 13, 1961, which Crowder filed as a part of an amendment to his application for authority to construct WXXL. After having been contacted by one Sonny Hamilton, a School Board member, to retract that letter, Black did so by letter dated November 30, 1962, which was filed with the Commission by Folkways. (Tr. 1736-1740, 1742).

17. With respect to the October 13, 1961, letter, Black said that a few days earlier Scarbrough had asked Black if he would write

such a letter, and Black agreed to do so. Scarbrough later brought a draft to Black, and Black gave it to his (Black's) secretary to use. She copied the draft on the letterhead of the school system, and Black signed it. He is not sure whether he mailed the letter or whether Scarbrough mailed it. (Tr. 1736-1739). Black dictated his November 30, 1962, letter himself, and did so because he was contacted by members of the School Board about using school stationery for his October letter. (Tr. 1740).

18. Black disagreed with the contents of the first letter only because he did not want it to be considered as a criticism of the cooperation the school system received from WHBT. (Tr. 1741, 1744). He also wrote the second letter because the first was on the school system letterhead. (Tr. 1745). He testified that no pressure whatsoever was asserted against him to write the October 13, 1961, letter, that he felt free to send it or not as he chose or to use his own words rather than those of the Scarbrough draft. (Tr. 1746-1747). He said that he thought a new station would be helpful to the educational activities in Harriman, and that he believes the public should know more about what is happening in the educational system there, both statements of which were in his October letter. (Tr. 1742-1743).

He agreed that Crowder cooperated with the school system during the time which he owned WHBT. (Tr. 1744).

James William Harmon

19. In 1961, Harmon was manager of the Harriman theater, and on October 26, 1961, he also wrote a letter to Crowder which was later submitted to the Commission. (Tr. 1748-1749). He said that Scarbrough had contacted him on two occasions before the letter was written to inquire as to whether he (Harmon) would write such a letter. Harmon told Scarbrough that he would do so, but kept putting if off. On the third contact from Scarbrough, Harmon suggested that he and Scarbrough go to his (Harmon's) office at the theater, saying that "I will jot off a letter". (Tr. 1750).

20. Scarbrough had two or three paragraphs for Harmon to use if Harmon felt them to be appropriate. Harmon wrote his letter, and asked Scarbrough how it should be signed. Scarbrough suggested that Harmon sign as the President of the Harriman Business Association, an office Harmon held at that time. (Tr. 1751). Harmon did not remember if he typed the letter on the letterhead of the Association, nor did he remember if he mailed it. (Tr. 1751). His discussions about the letter were all with Scarbrough. (Tr. 1751-1752).

21. Crosthwait later approached Harmon to ask when the Association had voted on the contents of Harmon's letter. Since no vote had occurred, a second letter was written by Harmon (which was filed with the Commission by Folkways) to indicate that the views expressed in his October 26, 1961, letter were his own. (Tr. 1753). Harmon testified that the first letter was created as a matter of choice by him, and that Scarbrough had discussed with him Crowder's plans for the station and its proposed programming. (Tr. 1753, 1756-1757).

William Kenneth Warren

22. Warren, in 1961, was part owner and business manager for the Ford automobile dealership in Harriman. (Tr. 1759-1760). He too wrote a letter addressed to Crowder on October 17, 1961. (Tr. 1761). He said that Crowder originally contacted him to ask if he would write a letter as President of the Roane County Chamber of Commerce. He did so, but does not remember whether he mailed it to Crowder or whether someone else did that. After a few days, Crowder brought back Warren's letter together with a draft of another letter. Warren read the draft, but does not remember whether his secretary re-typed it or not. In either event, Warren signed a second letter based upon the draft, and that second letter was submitted to the Commission as Crowder had indicated to Warren that it would be. (Tr. 1761-1762).

23. Warren freely and voluntarily signed the letter submitted to the Commission, no pressure or coercion of any kind having been assserted. (Tr. 1763, 1767). The first letter, which Warren had written himself, contained comments about Crowder's ability, business and moral character, and like matters. The second dealt with matters other than those. Warren had reservations, which he did not communicate to Crowder, about signing the second letter simply because he did not want to take sides in any local issue. (Tr. 1765-1766, 1769-1771). The first letter probably was written on Roane County Chamber of Commerce letterhead, but the witness does not know that to be a fact. Crowder did discuss his plans to cooperate in promoting civic events, and Warren understood that the second letter would be submitted to the Commission. (Tr. 1771-1772, 1774).

Freeman L. Crowder
(Called as adverse witness by Folkways)

24. Crowder sold WHBT for $80,000, $10,000 cash with the balance of $70,000 being represented by a promissory note signed by Folkways and the personal endorsements of the then Folkways' stockholders. (Tr. 243). The application for permission to construct WLIV in Livingston, Tennessee, was signed by Crowder and represented him as the proposed "Administrative General Manager". (Tr. 245-246).

The application for permission to modify the WLIV construction permit also was signed by Crowder on August 17, 1956. (Tr. 247). The license application for WLIV received by the Commission on November 15, 1956, was signed by McCoin. (Tr. 248). McCoin also acquired authority for program tests. (Tr. 249). License renewal applications for WLIV for 1958, 1961, and 1964, all were signed by McCoin. (Tr. 250-251, 256). Crowder did not see the documents when they were filed. (Tr. 256).

25. When McCoin purchased Crowder's 50% interest in WLIV, McCoin handled the transaction. The first time Crowder saw a copy of the telegram concerning consummation of the sale was at this hearing when counsel for Folkways showed it to him. (Tr. 259). In September, 1956, Crowder purchased the 7-Up bottling plant in Livingston. In December of that year, he bought a house in Livingston which he owned for some three years. He also owned his home in Harriman throughout this period, but stayed nights in the Livingston house from Mondays through Thursdays. He would return to Harriman on Fridays and go back to Livingston on Mondays. He was enlarging his bottling plant, and was acting as his own building supervisor. (Tr. 300-301, 343-346). Crowder has lived and voted in Harriman for 35 years. (Tr. 345). He denied completely that he held a philosophy of dealing in radio stations as was testified by Burn. (Tr. 351).

CROWDER'S CASE

26. Three witnesses, including Crowder, testified regarding the trafficking issue. The first was Robert Wheeler Gallaher.

Robert Wheeler Gallaher

27. Gallaher is a resident of Livingston, Tennessee, and is now employed at Station WLIV as sales manager. He has worked continuously in sales at WLIV since November 1, 1958. (Tr. 1308-1309). In 1958, he was employed by McCoin at the recommendation of Crowder. (Tr. 1309). He rarely saw Crowder at WLIV, perhaps once every four or five months. Crowder gave no instructions to Gallaher or to anyone else at WLIV of which Gallaher was aware. Gallaher saw no written instructions or documents of any kind signed by Crowder regarding WLIV. McCoin signed the checks. McCoin hired and fired. (Tr. 1310-1312).

28. Upon occasions, Gallaher visited Crowder at the Livingston bottling plant, and upon only two or three occasions did Crowder use commercial time on WLIV, although Gallaher tried to sell him more. (Tr. 1312, 1315-1316). McCoin died in 1966. (Tr. 1312).

Walter H. Scarbrough

29. Scarbrough is the editor of The Harriman Record, a newspaper published in Harriman. In 1950, he was a salesman for Crowder at WHBT. He then served with the United States Marine Corps, and returned to WHBT, working at the station from 1952 until Crowder sold it in 1956. (Tr. 1361-1362). He did not work again for Crowder until July, 1966, when Crowder hired him to be the Station Manager of WXXL. He left WXXL at the end of 1966 to work at his present job. (Tr. 1362). He is a friend of Crowder's. (Tr. 1363).

30. While not employed by Crowder in 1961, Scarbrough at his own suggestion contacted several people on Crowder's behalf in connection with the letters Crowder submitted to the Commission as an amendment to his application for approval to construct WXXL. Scarbrough discussed with Crowder those persons who might be contacted by Scarbrough, and did see Black, Harmon, and others. (Tr. 1355-1356, 1359, 1363).

31. Scarbrough testified about the circumstances surrounding the obtaining of the Black, October 13, 1961, letter. He discussed proposed programs with Black, and asked if Black would substantiate the fact that programming had been so discussed, "... not to say that he approved

of it or that he was asking for the station to be given its permit, but just to the fact that he was talked with". (Tr. 1359). Black said he would be glad to do so, but that he did not know exactly what should be in the letter. Black asked Scarbrough to assist in that regard, and Scarbrough agreed to draft some notes for Black's use, although telling Black that he (Scarbrough) would prefer that the final letter be in Black's own words. (Tr. 1359-1360). Subsequently, Scarbrough gave Black a rough copy, and Black said that he would have the secretary write the letter using essentially the wording Scarbrough had provided. Scarbrough did not see the letter Black wrote after Scarbrough left Black a draft, and Scarbrough did not mail it. (Tr. 1360, 1392-1393).

32. Scarbrough also saw Harmon, asking him to substantiate the fact that Scarbrough had discussed the proposed station with him and informing Harmon that his letter would be filed with the Commission. Harmon said he would be happy to do so, but that Scarbrough should return the following day when Harmon would have more time. Scarbrough returned the next day, but was told to return later in the week. After returning to see Harmon again, Harmon indicated that he still had not written the letter but would do so over the week-end. Scarbrough saw Harmon again the following Monday, at which time Harmon and Scarbrough went to Harmon's office. They discussed what the letter should contain,

and the letter was composed. Scarbrough believes that he typed the draft for Harmon, but that Harmon retyped it and signed. The draft did not include the title "President, Harriman Business Association", nor was it on the letterhead of the Association. Harmon was told that he need not use the draft as written, and that he need not write a letter at all if he did not wish to do so. Scarbrough took the letter signed by Harmon, and gave it to Crowder. (Tr. 1364-1365, 1396-1400, 1429).

33. Scarbrough also obtained a letter, dated October 13, 1961, from Mr. Adkisson, Commander of the Newman-Davis American Legion Post Number 53, and a letter dated October 20, 1961, from the Executive Secretary of the American Red Cross signed for the Chairman of the Roane County Chapter. He discussed proposed programming with both contactees, but in neither case did he draft or write the letters. (Tr. 1366-1368, 1404, 1407, 1408). Scarbrough also wrote on Crowder's behalf to the British Broadcast Corporation, University of Tennessee, Tennessee Highway Department of Safety, and Southern Baptist Radio and Television Company. (Tr. 1408-1409).

34. Scarbrough also composed a letter for Crowder to take to Warren, and gave his draft to Crowder. It was not typed on a letterhead. Scarbrough did not contact Warren. (Tr. 1401-1403). Other than obtaining

the letters, Scarbrough played no part in the preparation of the Crowder application or any amendment thereto. (Tr. 1421-1422). After Harmon wrote his second letter which was filed with the Commission by Folkways, Crowder showed it to Scarbrough who told Crowder that the second Harmon letter was "... a lie, an out and out lie". Scarbrough also wrote to Harmon and told him that. (Tr. 1419).

35. Scarbrough has visited Crowder while Crowder was working at the bottling plant in Livingston, and has had lunch with him at the Crowder apartment over the bottling plant. (Tr. 1414-1415, 1425). Scarbrough also knew some of the announcers at WLIV, and visited that station about once monthly from 1956 through 1964. He talked with McCoin there, but never saw Crowder on the premises. (Tr. 1374-1375, 1413-1414).

36. Scarbrough knew Willis in 1961, and did ride to and from Oneida with him. He had general discussions with Willis concerning the proposed station for Harriman, but nothing was discussed concerning Crowder's plans therefor. Scarbrough was not aware of Crowder's intentions regarding rates to be charged for advertising, and did not have conversations with Willis about them. (Tr. 1371-1374).

Freeman L. Crowder

37. Crowder testified that he had two business dealings with Burn. The first was in 1953 when he signed a lease for the studio in Burn's bank building in Rockwood for use in connection with the operation of WHBT, and the second was the 1961 Burn purchase of the note Crowder held as a result of his sale of WHBT. In 1953, he knew Burn when he saw him. The note was purchased as the result of Crosthwait's desire to exercise the debtor's pre-payment right contained in the note, and Crosthwait contacted Crowder to ask him to present the note to Burn at Burn's bank in Rockwood. Burn is not a friend of Crowder, he is not Crowder's banker, they do not attend the same church, and they are not members of the same political party. He does not know where Burn lives. Crowder testified that he had not seen Burn for five years prior to the 1961 meeting in Burn's bank when Burn bought the note. At that meeting were Crosthwait, Burn, Mr. and Mrs. Crowder, and a Floyd Hutchinson. Since 1961, Crowder has seen Burn twice, once when both attended a meeting with the Governor of Tennessee and the Senior Senator of that State, and the second time was in the hearing room while this case was being tried. Neither then nor at any time has Crowder ever discussed his radio philosophy or the operation of radio stations with Burn. He had no reason to talk to Burn about those matters, and has never held such an

intention or plan. (Tr. 1493-1497, 1513-1514, 1711).

38. With regard to the purchase of the note by Burn's bank, Crowder obtained the note when he sold WHBT to Tubb, Snow and McDaniel in 1956. From the beginning the monthly payments of $835 plus interest were made regularly, and Crowder did not wish to sell or otherwise dispose of the note and at no time ever talked to Burn about doing so. The note never was placed with a bank for collection. Because of the right to pre-pay clause in the note, Crowder had no choice but to permit Crosthwait to pay it off. (Tr. 1495-1497, 1703).

39. With regard to the letters filed in 1961 by Crowder as a part of an amendment to his pending application for authority to construct WXXL, he received a request from his then Washington counsel, Mr. Jorgensen, to acquire such letters. Crowder was then enlarging his bottling plant in Livingston, and when Scarbrough volunteered to assist in acquiring the letters, Crowder permitted him to do so. He discussed programming with Scarbrough before Scarbrough made his contacts with the letter writers, but gave no instructions to Scarbrough as to how to conduct the survey. (Tr. 1518-1523, 1715). Crowder obtained the letter from Warren, and obtained the letter dated October 17, 1961 from A. B. Foster, the then Mayor of Harriman.

The rest were obtained by Scarbrough. All of the letters submitted to the Commission were filed simply to show that a survey had been made. (Tr. 1518-1523, 1562-1563).

40. Crowder did list for sale both WHBT and WDEH. Marto Broadcasting Company, Inc.,did attempt to purchase WHBT by application so to do filed with the Commission of February 14, 1956. However, WHBT by contract dated April 13, 1956, was eventually sold to Folkways (Tubb, Snow, and McDaniel). Crowder sold both because he was a nervous wreck. He saw a physician, and was advised to get out of the radio business on a day-to-day basis. WDEH in Sweetwater was absentee owned, and the problems Crowder had with his Managers there caused his nervous condition. The first WDEH Manager became involved with a secretary, and the second became involved in local politics to the detriment of the station's business. As a result, Crowder sold both WBHT and WDEH. (Tr. 1483-1484, 1634, 1679-1681, 1700-1701).

41. Crowder's brother-in-law, McCoin,sold his automobile business, and wanted to engage in radio broadcasting although he had no such experience. He asked Crowder to assist, and Crowder agreed to do so upon the condition that after the station (WLIV in Livingston) went on the air, Crowder would take no active part in its operation.

Crowder helped McCoin place WLIV on the air by engaging counsel, hiring the consulting engineer, and ordering equipment. After the station began broadcasting, Crowder did nothing except to give occasional advice to McCoin upon request. Crowder visited the station only occasionally, signed no checks, signed no forms, and had nothing to do with the operational activities. McCoin did all the buying and handled all transactions. Crowder did not know that McCoin continued to list Crowder as General Manager and at no time did Crowder intend to deceive or mislead the Commission regarding such listing. (Tr. 1485-1487, 1514, 1711). Crowder drew some $4,000 to $5,000 annually as dividends from WLIV. McCoin drew a like amount, and in addition received a salary of $100 weekly. Crowder drew no salary. (Tr. 1700).

42. In 1956, Crowder purchased the Livingston bottling plant, and was busy enlarging it from 5,000 to 25,000 square feet. While he had then and has now a plant manager, he supervised the construction himself. Since Livingston is some 75 road miles from Harriman, he bought a house in Livingston to which he added a garage, intending to move there permanently. However, Mrs. Crowder preferred to stay in Harriman, so Crowder used the house only as a place to sleep while in Livingston. He constructed an apartment over the bottling plant, which he still

maintains. Neither the purchase of the house in Livingston, which he later sold, nor the construction of the apartment had anything to do with the fact that Crowder owned a 50% interest in WLIV. (Tr. 1482-1483, 1487-1493, 1607-1608).

43. It was McCoin's desire to dissolve the McCoin-Crowder ownership of WLIV, and McCoin made Crowder a buy or sell offer of \$50,000.[10] Crowder elected to sell to McCoin since his experience in owning two stations before (WHBT and WDEH), one of which was an absentee ownership situation, dictated the undesirability of such dual ownership, and Crowder then had pending before the Commission the WXXL application for Harriman where Crowder resides. (Tr. 1489-1490). McCoin's attorney drafted the agreement whereby Crowder sold his 50% interest in WLIV to McCoin. At Crowder's insistence, McCoin personally lined out the phrase "...and for further consideration and in order to induce the said R. H. McCoin to purchase my interest in the above referred to enterprise". Crowder insisted upon the removal of the phrase because he did not wish to to sell and did not try, therefore, to induce McCoin to buy. (Tr. 1480-1482, 1595-1596).

10/ McCoin had been, for two years, urging Crowder to sell his WLIV interest to McCoin, although Crowder had said he did not wish to do so. (Tr. 1674).

44. Burn had stated that Crowder had mentioned McMinnville as an example of virgin territory; i.e., a small town which had no radio station. (Tr. 380). Crowder testified that he had no such conversation with Burn, and that the Commission's records would reflect that McMinnville now has two radio stations, one of which was constructed before WHBT in Harriman. He was not aware that McMinnville people were interested in establishing a radio station in Rockwood when Crowder owned WHBT. (Tr. 1501-1502, 1681-1682). Burn also had stated that he had a conversation with Crowder about radio tubes and changing the frequency of WHBT by Folkways. Crowder testified that he had no such conversation, and that he considers tube cost to be a relatively small item in a year's cost of operations for a radio station. When he owned WHBT, it was operated on 1230 kilocycles fulltime with 250 watts power. Folkways now operates on 1600 kilocycles with 5,000 watts. Crowder has no independent knowledge of the results of higher frequencies with more power as contrasted to lower frequencies with less power. Nor does he know that the alpha tube in the final stage of a transmitter is an important tube. (Tr. 1503-1504, 1703-1706). Burn also stated that Station WRKH was started in Rockwood when Crowder still owned WHBT and WDEH, and that it was about that period one of the conversations occurred wherein Crowder had related to Burn a radio philosophy envisioning acquisition of a station with a thought to later selling at a profit. Crowder not only denied having such a conversation

with Burn, but pointed out that WRKH was constructed after Crowder had sold both WHBT and WDEH. (Tr. 1498-1499). Crowder was not aware during his ownership of WHBT that establishment of a Rockwood station was even being considered. (Tr. 1681-1682).

THE CARROLL ISSUE

45. Station WHBT's 0.5 mv/m contour serves all of Roane County and parts of Loudon, Meigs, Cumberland, and Anderson Counties. It is operated on 1600 kc with 5 kw power, daytime only. WXXL is proposed to operate on 970 kc with 500 watts power, daytime only. (Broadcast Bureau Exhibit No. 1). Sales Management list the estimated population of Roane County as of December 31, 1965, as 41,600. (Broadcast Bureau Ex. No. 10). The population of Harriman is in excess of 10,000. (Tr. 492-493, 1279-1280). WHBT promotional material includes what is labeled a "WHBT Area Coverage Map" which Crosthwait testified reflects "to some degree" the area the station feels it is in a position to serve. The shaded area is intended to show to advertisers the potential area the station could reach. That area covers all or parts of the Tennessee counties of Roane, Morgan, Anderson, Loudon, Campbell, Union, Knox, Blount, Monroe, McGinn, Meigs, Rhea, Bledsoe, Van Buren, White, Putnam, Overton, Fentress, and Scott. (WHBT Exhibit No. 12; Tr. 734, 736). Crowder testified that in his opinion, major sales efforts for the

Harriman stations would occur in Roane County, but that sales would not be confined to that county. (Tr. 1706-1708). One other radio station is operated in Roane County, WRKH in Rockwood. (Tr. 840-843).

FOLKWAYS' CASE

Harry Thomas Burn

46. In advancing its position that Harriman could not support in the public interest a second broadcast service, Folkways relied in part upon the testimony of Burn, who said that he is a "... student of the economic picture". (Tr. 368). About ten years ago, according to Burn, he felt that the then new station in Rockwood (WKRH) could not be successful. (Tr. 379). The station was established in Rockwood against the better judgment of Burn, because Burn "...never did see how he (the station owner) could survive as a matter of economy of the town and county". (Tr. 469). Although WRKH still exists in Rockwood, according to Burn, "... it barely is there". (Tr. 433). He has loaned funds from time to time to the licensee of WRKH, and still believes that the station is not doing well.[11] (Tr. 434, 469).

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[11] See testimony of Crosthwait, ante, re his conversation with Mr. Holloway, the WRKH owner.

47. Burn's Rockwood bank, The First National Bank and Trust Company, operates two branch banks, one in Harriman and one in Kingston. (Tr. 369). The Harriman branch was constructed about ten years ago, and the Kingston branch was built in 1965. (Tr. 425-426). Burn testified that his bank for fifteen years has had an average annual growth of sixteen percent as against the national average of four to five percent. (Tr. 428). In 1960, its deposits were $4,305,443. Deposits have since increased to in excess of seven and one-half million with total assets of approximately eight and one-third million. (Tr. 427). The Harriman branch has acquired about a million dollars in savings accounts and an additional million in checking accounts. The Kingston branch has about one-half million in checking accounts and savings accounts have increased from $180,000 to about $475,000 to $500,000. (Tr. 379). Burn's bank for two to three years has been "loaned up". (Tr. 488).

48. While Burn admitted that the economy has " ...advanced to some extent" with some increase in employment over the last fifteen years, he feels that the economy is not healthy. He attributes some of the growth his bank has experienced to the opening of branch offices, and stated that in his view, when the public is concerned about the future, people increase savings accounts. (Tr. 477, 487). Burn felt that an increase in bank deposits not attributable to the opening of branch offices would indicate

a healthy economy. Economy is reflected, according to Burn, in the size of retail sales, bank deposits, and payrolls of the area. (Tr. 491). However, he also said "I don't care what the national statistics may show. I am testifying that the local situation is not healthy". (Tr. 492). According to Burn, the only new industry in the area is a steel mill which has been in operation a few months with some 200 to 250 employees. (Tr. 492-493).

Anna Sue Birchfield

49. Mrs. Birchfield is an ex-WXXL employee, having worked selling time from about October of 1966 for some five weeks. Scarbrough hired her and was her immediate supervisor. (Tr. 874-875). After about three weeks, Scarbrough told her that her work was not satisfactory. As a result of unresolved disagreements, Mrs. Birchfield quit her job. She believes WXXL was not fair with her, although she was paid all that was promised to her. (Tr. 886-887, 899-900). During her employment at WXXL, her husband was selling advertising for the Junior Chamber of Commerce which was broadcast by WHBT, and during this period Mrs. Birchfield read advertising over the WHBT microphone as a Jayceette. (Tr. 888-889).

50. Mrs. Birchfield stated that among other accounts which she sold while at WXXL were Dodson's Drive-In, Arnolds Insurance Agency, and Norris Creamery. With regard to the Dodson account, she sold

fifteen-minute programs for $12 and thirty-minute programs for $19.20. Although such prices are for yearly rates, Dodson was on a week-to-week basis. The price used was based upon Scarbrough's instructions to Mrs. Birchfield. (Tr. 876-880). As to the Arnold account, she said Crowder told her to tell Arnold that Crowder had insurance with Arnold and it was coming up for renewal.[12/] She told that to Arnold, and Arnold bought time on WXXL. (Tr. 880-882). She also sold advertising to Norris Creamery at prices based upon a yearly rate, although the advertising was on a monthly basis. (Tr. 883). Mrs. Birchfield testified, however, that all three accounts were carried consistently by WXXL during the term of her employment, and that she does not know whether they are still on WXXL. (Tr. 891-894).

51. She tried to sell time to a Mr. Hedrick, but was not successful. Scarbrough indicated that the advertising would cost Hedrick nothing. (Tr. 882-883). She also was not successful in selling time to Orkin Service even though Crowder told her to remind Orkin that Orkin was used by Crowder to spray the bottling plant in Livingston. (Tr. 884-885). This witness sold other accounts while at WXXL, three of which she could remember, and all of which were sold at rate card prices. (Tr. 896-898).

[12/] Crowder stated that he did say that he was insured with Arnold and that Arnold should buy from Crowder. He did not tell Mrs. Birchfield to relate that statement to Arnold, however. (Tr. 298-299, 346-347).

Kenneth T. Crosthwait
and
Earl O. Wright, Jr.

52. Wright is a public accountant practicing in Harriman with the firm of Rymer & Wright. His firm does the accounting for Folkways. He was used as a conduit for the introduction of certain of the financial statistics and records Folkways wished to introduce into evidence, and had no independent knowledge of other matters. (Tr. 1031-1033).

53. Folkways introduced statistics which indicate that approximately 80% of WHBT sales occur in Roane County. From September, 1965, to February, 1967, regional and national sales increased from 10.9% to 15.7%. Sales in Oak Ridge for that same period decreased from 7.6% to 5.1%. Roane County sales for that period went from 81.5% to 79.2%. (WHBT Exhibit No. 31).

54. Roane County total retail sales rose from $31,857,000 in 1963 to $37, 454,000 in 1965. Effective buying income for Roane County in net dollars was $59,374,000 in 1963. By 1965, it had increased to $66,864,000. (WHBT Exhibit No. 14).

55. Folkways selected for comparative presentation three periods of equal duration -- 1. September 1, 1964, to February 28, 1965. 2. September 1, 1965, to February 28, 1966. 3. September 1, 1966 to February 28, 1967. Total sales in Period 1 were $40,759.14; in Period 2

$45,399.50; and in Period 3, $38,661.62. The Period 1 loss was $5,877.48; for Period 2, $2,779.89; and for Period 3, $4,097.20. (WHBT Wxhibit 32).

56. For the fiscal year extending from July, 1962, through June, 1963, salaries and commissions paid by WHBT totaled $49,177, of which amount Crosthwait as General Manager received $11,600. Depreciation was $9,266. For the next fiscal year, salaries and commissions rose to $53,107, of which sum Crosthwait received $11,625. Depreciation was $9,649. For the fiscal year from July, 1964, through June, 1965, salaries and commissions were $52,817, of which Crosthwait received $11,850 (although from September, 1964, he lived and worked in West Virginia). Depreciation rose to $10,063. For the next fiscal year accounting period, salaries and commissions were $54,481, with Crosthwiat receiving $11,000 thereof. Depreciation was $9,406. For the first two months of 1967 (the only portion of this year's finances made available by Folkways), Crosthwait still draws a salary as General Manager. (Broadcast Bureau Exhibit No. 3).

57. Crosthwait does not know the average monthly number of advertisers who used WHBT in 1966 or for 1965. He guessed that about 90 did so in 1964. He agreed Folkways had represented to the Commission in the past that for 1963 and 1964 such monthly average was from 100 to 125 accounts. (Tr. 1781-1783). WHBT local sales to advertisers increased from $65,019 in 1961 to $78,794 in 1962, and to $80,476

in 1963. While the number of employees decreased from 14 in 1963 to 11 in 1965, for the period from 1961 through 1962, the number of fulltime employees remained fixed at eight with one parttime. (Tr. 814-817).

58. As a matter of practice, WHBT writes off all trade-out revenue with an equal value expense figure. In other words, trade-out advertising revenue is considered to be balanced as expense items. (Tr. 633,635). Trade-out figures were not supplied by WHBT, although Crosthwait guessed one such trade-out (Barbie and Ken account) would be about $1,000. The station has traded-out an automobile, Crosthwait said, and also has a trade-out with a stationery store in Harriman, called "The Printery"and one for "Ivory's". (Tr. 642-643, 655-656, 660-661, 664-665, 813, 865-867, 1787-1788). WHBT also has paid expenses for building and maintaining a fall-out shelter in the then residence of Crosthwait, and for a power cruiser which was never used for remote broadcasts as was intended. (Tr. 1275-1277, 1280-1281).

59. The bulk of WHBT revenue is derived from selling spot announcements as contrary to selling program time. (Tr. 729). WHBT's present rate card has been in effect since February 15, 1963, with a low end spot rate for sixty seconds of $1.65. (Broadcast Bureau Exhibit No. 4). The WXXL low end spot rate for sixty seconds is $2.00.

(WHBT Exhibit No. 5). From 1961 to its change in 1963, the low end spot rate for sixty seconds at WHBT was $1.95. (Crowder Exhibit No. 25).

60. Crosthwait could not account for some of the prices at which time was sold by WHBT to advertisers, although he thought that some sort of special programming might have occurred. (Tr. 832, 838-839). When asked if he was going to testify that WHBT never sold under rate card prices, he replied "I didn't say that, sir". (Tr. 539). One such example is the Miller & Brewer account for which Crosthwait explained that the rate was either attributable to an annual purchase of 1872 spots or a package rate of 100 or over within one week. (Tr. 921-923). Reference to the Miller & Brewer contract, however, indicates that while 1872 spots were ordered over a twelve-month period, the advertiser has the right to cancel "at any time". (Broadcast Bureau Exhibit No. 5).

61. WHBT has dropped its affiliation with CBS, and as a result no longer is obligated to pay the annual $3,081 line charge cost. Much of the CBS programming canceled was news. Some CBS time was sustaining, some commercial. WHBT in the main has replaced the network news with wire service news, and has replaced CBS entertainment programming with records. While it could carry some local live programming in lieu of some of the CBS programming,

WHBT has not done so. (Tr. 758-759, 927-943, 1232-1237, 1238-1239).

62. WHBT is no longer a member of the National Association of Broadcasters. It no longer pays monthly dues to NAB of $17.50. (Tr. 761). No staff members have been replaced by newly hired employees when they have resigned. Thusly, Grant Roberts was Station Manager until he resigned because of ill health in December of 1966. He was replaced by William Carrigan, who was already a member of the WHBT staff. Roberts received $9,325 in 1965 and was not reduced in salary for the year 1966. Another employee, Eloise Wolls, was not replaced after her resignation. During 1966, she received in excess of $2500. (Tr. 763-764, 862-864). Crosthwait was unable to explain the staff changes in duties or to give the names of particular staff members involved in the cut-back referred to in Paragraph 3 of WHBT Exhibit No. 13. (WHBT Exhibit No. 13, Tr. 760-761).

63. WHBT has eliminated a once weekly fifteen-minute program called "Tennessee Sports" which was carried on a thirty-nine week basis. The program was paid for by WHBT, a cost the station no longer pays, and was carried partly commercial. (Tr. 764, 1226-1231).

64. Crosthwait talked to Mr. Holloway, the principal owner and the General Manager of Radio Station WRKH in Rockwood, inquiring within the past few months as to the status of WRKH business. He was told by

Holloway that "business was good". (Tr. 840-843).

CROWDER'S CASE

Walter H. Scarbrough

65. Scarbrough worked for Crosthwait at WHBT in the Summer of 1959 as a salesman. (Tr. 1368-1369). During sales meetings, Crosthwait has expressed the philosophy that if he had a few large accounts the smaller ones could go somewhere else. (Tr. 1370, 1379).[13]

Freeman L. Crowder

66. WXXL programs a full daytime program schedule seven days weekly. (Tr. 1523). It has no written contracts with advertisers. (Tr. 335-336). WXXL adheres to its rate card structure with the exception of introductory offers which last a maximum of thirteen weeks per advertiser, and with the exception of meeting WHBT prices. (Tr. 1490-1492). The Hedrick account was sold 364 spot announcements for $1.50 per spot. House of Flowers was sold twenty-second spot announcements for $1 per spot. (Tr. 1585-1586, 1698-1699).

67. To Crowder's personal knowledge, there are at least 250 potential radio advertisers in the Harriman area. (Crowder Exhibit No.

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[13] Crosthwait denied making the statement. (Tr. 1780-1781).

19, Tr. 1552-1557). There are two new plants in Roane County since 1961, Roane Manufacturing Company (an apparel factory) and Tennessee Forging Steel Corporation. Under construction is Beth-Tec Corporation. Three plants have expanded since 1961 in Roane County -- Yankee Lumber Company, Roane Hosiery Company and Adler Hosiery Company. (Tr. 1478-1479). There are two banks in Rockwood, two in Harriman, and two in Kingston. (Tr. 1545-1546).

68. Retail establishments in Roane County rose from 350 in 1948 to 399 in 1963 with sales rising from $14,867,000 to $35, 001,000. Retail establishments in Harriman rose from 124 in 1948 to 156 in 1963. Retail sales increased in Harriman for that period from $8,074,000 to $16,068,000. (Crowder Exhibit No, 1). Average per capita personal income for Roane County increased 64.6 percent from 1950 to 1960. (Crowder Exhibit No. 2). In constant 1950 dollars, Roane County's average per capita personal income increased from 1950 to 1960 by 33.8 percent. (Crowder Exhibit No. 3). Total personal income between 1950 and 1960 for Roane County increased 65.4 percent. (Crowder Exhibit No. 4). Total earned income for Roane County increased during the period from 1950 to 1962 from $21,193,000 to $49,730,000, a change of 134.7 percent. (Crowder Exhibit No. 5). The number of families in Roane County for the period from 1950 to

1960 increased by 29.6 percent. (Crowder Exhibit No. 7). The median family income for Harriman increased for the period from 1950 to 1960 from $2133 to $4256. Total and per capita personal income for Roane County increased from 1950 to 1962 from $25,243,000 to $57, 248,000. (Crowder Exhibit No. 8).

69. Roane County trade and services retail increased total sales from $28,678,000 in 1958 to $35,001,000 in 1963. Annual payrolls increased for that period from $2,364,000 to $3,013,000. Harriman's total sales increased from $11,110,000 in 1958 to $16,068,000 in 1963. (Crowder Exhibit No, 11). Roane County's population increased from 39,600 in 1961 to 44,900 as of March 1, 1967. During that same period, its consumer spendable income rose from $45,144,000 to $64,658,000. (Crowder Exhibit No. 13). Income per Roane County household in 1961 was estimated as $3,655 which rose in 1967 to $8,647. (Crowder Exhibit No. 14).

70. Between 1960 and 1966, deposits of the First National Bank, Harriman, increased from $9,689,112 to $15,743,104. (Crowder Exhibit No. 16). Between 1960 and 1966, deposits of the Rockwood Federal Savings & Loan Association, Rockwood, increased from $4,684,980 to $6,993,144, and deposits of the First National

Bank & Trust Company, Rockwood, increased from $4,305,443 to $7,218,239. (Crowder Exhibit No. 17). From 1960 to 1966, deposits of the Kingston Bank & Trust Company, Kingston, increased from $4,618,873 to $7,237,394. (Crowder Exhibit No. 18).

CONCLUSIONS

71. Over a period of eighteen years (from 1946 to 1964), Crowder has owned all or a part of three radio stations. He owned a minority interest in WHBT from 1946, when the station was constructed, to 1950, when he obtained 100%. He continued to operate WHBT until its sale in 1956. Hence, this station Crowder owned all or a part of for approximately ten years. He constructed the Sweetwater station (WDEH) in late 1954 and early 1955, and sold it concurrently with the sale of WHBT because of the state of his health caused by personnel problems in Sweetwater, Crowder's only absentee- owned station. He explained his reason for desiring to sell as wishing to retire from the radio business. He did not at the time the applications for assignment of licenses were filed further explain to the Commission that his wish for retirement from the field of radio was motivated by his physician's advice concerning his nervous condition.

72. Meanwhile, in 1956, Crowder owned 50% of WLIV, and he was listed on the application for permission to construct as the proposed General Manager, an apparent inconsistency with his expressed wish to retire from broadcasting. Crowder, however, has explained that he performed no function in the day-to-day operation of WLIV after he helped his brother-in-law, McCoin, to get the station on the air, and did not know that McCoin continued, through the years, to list him as the General Manager with McCoin as Station Manager. After he put WLIV on the air, Crowder signed no documents, filed no applications or forms with the Commission regarding WLIV, hired no employees, supervised no one at the station, and gave no instructions. He testified that he was rarely at the station, and that only upon occasion did he, at McCoin's request, give McCoin advice. Insofar as not being at the WLIV studio is concerned, Crowder's testimony was corroborated by Gallaher, who was employed at WLIV on a daily basis from 1958 on, and by Scarbrough, who visited the WLIV studios at least once a month.

73. While the purchase of a house in Livingston standing alone might be some indication of an intent to be active at WLIV, Crowder's ownership of the bottling plant in that community since 1956, his enlargement of the facility from 5,000 to 25,000 square feet while

acting as his own building supervisor, and the growth of that business refutes such indication. Crowder's testimony in no way is disputed as to these matters. Adding further weight are the facts that Crowder, while still owning 50% of WLIV, sold the Livingston house after having it for some three years, that he constructed an apartment at the bottling plant for use when he was there on plant business, and that he still has and uses the apartment, even though he has had no ownership in WLIV since 1964.

74. According to Burn, Crowder expressed to him in a conversation of some ten years ago that the way Crowder felt money could be made in the radio business was to acquire a franchise, build up the business, and then sell. However, Crowder unequivocably denies that such a conversation or conversations occurred. Certainly Crowder's sale of WHBT and WDEH cannot be interpreted as falling within that philosophy in view of the evidence indicating why Crowder sold those facilities. The record is not in dispute either that Crowder did not wish to sell his interest in WLIV, and did so only after two years urging by his brother-in-law.

75. There are other indicia usable for resolving the conflict in testimony between Burn and Crowder. Burn's memory was less than accurate about the circumstances of his bank's purchase of the so-called Crowder note. Crowder testified that he was approached by Crosthwait who wished to take advantage as the then owner of Folkways of the right to pre-pay, and that Crosthwait made the arrangements for Crowder to be at Burn's bank with the note for payment thereof. Burn testified that Crowder had been trying to sell him the note before his bank finally bought it, and that he did not think Crosthwait wanted the note purchased in order to refinance Folkways. Crosthwait, however, confirmed Crowder's testimony. He stated that he did instigate the note purchase, that he did contact Crowder, and that he did make arrangements for Crowder to bring the note to the Burn bank for payment as a part of his plan to refinance Folkways. Crowder had no trouble over the years in receiving $835 monthly plus interest, and at no time had he ever placed the note with a bank for collection. He also testified that he sold it to Burn because he had to do so under the pre-payment provision, not that he wished to get rid of the instrument. By virtue of the purchase by the Burn bank, Folkways' monthly payment decreased from $835 plus interest to $500. On balance, the record supports Crowder.

76. Burn's memory was not accurate either as to his ownership interest in WOVE, the Welch facility principally owned by Crosthwait. The fact is that he is now and has been since Crosthwait bought the station, an officer of that licensee, a director of the company, and the second largest stockholder. Folkways also is indebted to the Burn bank for some $23,000 and the bank is committed to lend an additional $15,000 to Folkways in furtherance of its plans to construct an FM station in Harriman. Burn frankly admitted that his interest in this hearing stems from the fact that his bank is a lender of funds to Folkways, all of which have not yet been repaid. Under these circumstances, it can hardly be said that Burn is a disinterested third party at this juncture even though his bank was denied standing to pursue the Petition to Deny it filed as a creditor of Folkways against the WXXL application.

77. Crowder has denied having any intention at any time to traffick in licenses, and he has denied ever conversing with Burn about the radio business. Since Burn testified that only he and Crowder were present at such conversations, resolution of the conflict must be found other than in the testimony of a third party.

Crowder's record of broadcast ownership and the circumstances surrounding each acquisition and disposal support his position. When coupled with the inconsistencies found in the Burn evidence, the fallibility of the Burn memory when tested against that of Crosthwait, for example, and the evident interest Burn has to insure the financial success of the WHBT and WOVE stations, his testimony must be rejected insofar as it might have tended to indicate a state of mind of Crowder some ten years ago.

78. Willis, of course, simply said that Scarbrough thought the WXXL rates might be as much as 50% lower than those of WHBT. WXXL has been in operation since mid-August of last year. Its rate card is higher in many areas of spot announcement cost, WHBT's principal income source, than is that of WHBT. Crowder has been meeting WHBT prices, but not underselling WHBT. Even assuming, for the sake of argument, that the Willis statement, denied categorically by Scarbrough, can be accepted at face value, WXXL prices indicate that such a situation has not happened. It must be remembered also that Scarbrough, at that time, was not employed by Crowder, and that he had no association with him as an agent or otherwise. He was not empowered to speak for Crowder,

and he has denied that the Willis conversation took place. The value of Willis' statement, under these circumstances, is de minimis, if indeed any value whatever attaches to it.

79. The circumstances surrounding the acquisition of the so-called program contact letters, particularly those obtained from Black, Harmon, and Warren, have been fully explored. Briefly stated, Scarbrough acting solely as a friend of Crowder's, upon a voluntary basis, obtained letters, on behalf of Crowder, from Black and Harmon. He drafted certain portions or all of each letter, but in both cases, the signatures were affixed thereto freely and voluntarily after the contents of the final products were read by the signatories. No pressure or coercion of any kind was asserted, and the retractions or changes made later by Black and Harmon were occasioned by criticism of the use of school system and business association letterheads and titles, not by the contents of the letters themselves. No representation was made to the Commission that Crowder personally obtained the letters, and they were submitted simply to indicate that a survey had been made. Scarbrough did discuss programming with both Black and Harmon. As for the Warren letter, Warren also acted voluntarily and without pressure from Crowder

or anyone on his behalf. His first letter, written himself, was laudatory of Crowder's business acumen and Crowder's character. Since it did not deal with the matters Crowder discussed with Warren, Scarbrough drafted a letter for Warren's signature which Crowder took to Warren. Again, Warren signed as a matter of choice. He had no quarrel with the substance of the letter, but felt that it might place him in a controversial position with Harriman residents where Warren was in the automobile business. Warren did not convey his reservations about signing the second letter to Crowder, and Warren understood that the letter was intended to be submitted to the Commission. Under these circumstances, no intention to engage in trafficking can be attributed to Crowder because of the manner in which the letters were obtained or submitted. It is noted also that Scarbrough obtained other letters for Crowder (none of which he drafted or assisted in the drafting) which were submitted to the Commission, and that Crowder, himself, obtained one from the then Harriman Mayor.

80. None of the evidence presented on this issue is persuasive insofar as it was introduced to indicate an intention upon the part of Crowder to engage in trafficking. The fact that Crowder made a profit from the sale of his broadcast interests has no significance in

the factual context surrounding each such disposal. In each case, the price was fixed in the market place, and each facility was a going business. Crowder held his interest in one facility (WHBT) for ten years, certainly not the mark of one who is interested in trafficking. He acquired an absentee ownership station in WDEH, and sold both stations when his health deteriorated. He was not active in WLIV after it went on the air, and reluctantly sold his interest in that station after having held it for about eight years. Again, this is hardly the act of one who is interested in quick profits from the sale of radio facilities, and the period of interest far exceeds the so-called three-year Rule now in effect. In short, the evidence presented dictates the conclusion that Crowder did not engage in trafficking in broadcast authorizations.

81. Going now to the so-called Carroll issue, to determine whether the area to be served can support in the public interest more than the existing service, the record can permit but one conclusion. Each document in evidence indicates that retail sales are increasing for Harriman and for Roane County, that bank deposits are increasing, that personal income is rising, that the number of families is increasing, that sales are up, that spendable income is rising, that new business is coming to Harriman, and that old businesses are expanding. There

are at least 250 potential advertisers in the Harriman area, and WHBT has not, at any time, had more than one-half that number on a monthly average. Rates for the two facilities are comparable, although WHBT had charged more for its advertising time prior to 1963 than it presently does. WHBT presented no evidence as to advertisers it has lost as a result of the advent of WXXL. Its revenue statistics do not reflect a true picture inasmuch as they contain no revenues obtained as a result of so-called trade-outs. Crosthwait testified that WHBT did have trade-out accounts, one of which was estimated would run about $1000 per year, and that it had traded-out an automobile. Its practice of writing off trade-out revenue by an equal amount of expense does not negate the fact that such trade-out revenue is a part of the total revenue received by the station and should be reported as such. We make no comment, at this time, about the practice of writing all trade-outs off with an equal amount of expense except to indicate that the practice for the purposes of this hearing results in an understated value for revenues. As to expenses, Crosthwait still receives compensation from WHBT at an annual rate in excess of $11,500, although he has stated on the record that since September, 1964, except for a few months preparing for this hearing, he has spent 90% of his time some 200 miles away in Welch, West Virginia, where he is the General

Manager and principal owner of WOVE. The expense figures also include depreciation, and amounts spent for such items as a fall-out shelter and a boat, as well as unusual costs such as attorney's fees higher than normal because of the legal requirements of this hearing. On balance, the financial data submitted by Folkways, while showing a loss in each case, include deflated revenue figures and inflated expenses. As such, they are not reliable indicia of WHBT's financial status.

82. Even assuming, arguendo, that WHBT is losing revenue which results in a loss operation as a result of the advent of WXXL, the record is essentially bare of evidence tending to show a commensurate loss in public service. While WHBT has canceled its CBS affiliation and has dropped one 15- minute program which it was carrying weekly for 39 weeks, there is no showing that the substitute programming now carried is not in the public interest or is less so than formerly. No indication has been made that the Crowder station is not broadcasting in the public interest, or that the public would be adversely affected even in the unlikely event that WHBT would be forced to cease operation. WHBT has not related its substitution of jobs, Carrigan for Roberts as Station Manager and the assigning the duties of Eloise Woll to others, to the public interest, and its general allegation that the public interest will

suffer in the future was not explained, expanded, or substantiated by any credible evidence. As to the other Roane County station, WRKH in Rockwood, while Burn felt it was not doing well financially, Crosthwait testified that its owner had told him business was good.

83. In sum, even assuming the service area of WHBT to be limited to Roane County, the economy of that locale has been demonstrated amply to be expanding. Ranged against the statistical data in the record, all of which indicates a healthy economy, is the opinion of Burn to the contrary (refuted by the success of his own bank as well as the success of other competitive banks in the service area) and the financial data as to the WHBT loss operation, which do not include all revenues and which do include paper expense figures for depreciation and a large salary for a General Manager who spends 90% of his time at another station in another State, where he also acts as General Manager. In consideration that Folkways carries the burden of establishing its financial instability, relating it to the economy and the advent of WXXL, and finally demonstrating injury to the public interest, it must be held on this record that it has fallen short in all three necessaries.

For these reasons, it is urged that the application of F. L. Crowder, trading/as Harriman Broadcasting Company, for authority to construct and operate a new standard broadcast station on 970 kc in Harriman, Tennessee, daytime only, with 500 watts power be granted, and that the Petition to Deny filed in this proceeding by Folkways Broadcasting Co., Inc., be denied.

Respectfully submitted,

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY

Donald E. Bilger

By /s/ Donald E. Bilger

Smith, Pepper, Shack & L'Heureux
His Attorneys

1101 17th Street, N. W.

Washington, D. C. 20036

June 12, 1967

CERTIFICATE OF SERVICE

I, Connie Masquelier, a secretary in the offices of Smith, Pepper, Shack & L'Heureux, do hereby certify that I have on the 12th day of June, 1967, cause to be delivered two copies of the foregoing "Proposed Findings of Fact and Conclusions of Law" to each of the following persons:

The Honorable Herbert Sharfman
Federal Communications Commission
Washington, D. C. 20554
Hearing Examiner

John B. Kenkel, Esq.
Miller & Schroeder
808 Munsey Building
Washington, D. C. 20004
Counsel for Folkways Broadcasting Co., Inc.

John B. Letterman, Esq.
Federal Communications Commission
Washington, D. C. 20554
Counsel for the Broadcast Bureau

Connie Masquelier
/s/ Connie Masquelier
Connie Masquelier

ORIGINAL
FILE

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JUN 12 1967

F.C.C.
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder tr/as)
HARRIMAN BROADCASTING COMPANY (WXXL)) DOCKET NO. 17255
Harriman, Tennessee) File No. BP-15122
)
For Construction Permit)

JUN 12 1967

Dockets
First c Bk
Orig & 19
6-12-67

TO: The Commission

BROADCAST BUREAU'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

* * *

931

84. The WHBT renewal of license (BR-1664) was filed on October 31, 1951. The total assets of the station were then listed as $29,404.17. WHBT License File No. 2. Later, in 1954, certain improvements were made by Crowder at a cost of $2,046.81. WHBT License File No. 2 (See BL-5353).

85. On December 7, 1954, Crowder filed an application (FCC Form 316) for assignment of the permit of WDEH (BAP-253) and of the license of WHBT (BAL-1919) from the Harriman Broadcasting Company, Inc., to F. L. Crowder as an individual owner.[1] In this

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[1] The construction permit for WDEH was issued September 15, 1954. See findings, below, as to WDEH. The inference which WHBT sought to establish from this evidence is that it represented a first step preparatory to sale, the idea behind it being to place the assets in the hands of Crowder as an individual to avoid double taxation, that is, once to the corporation and then to him on dissolution of the corporation. As a possible motive, this theorty has merit.

application it was stated that F. L. Crowder was the owner of 100% of the stock of The Harriman Broadcasting Co., Inc., and that he desired to discontinue doing business as a corporation and upon approval of the assignment he would do business as an individual owner. Commission consent was granted December 14, 1954 and the assignment consummated on December 31, 1954. WHBT License File No. 2. T. 1610-1614, 1678-1679.[2]

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[2] It is observed that Crowder put both WDEH and WHBT up for sale on June 22, 1955, scarcely 6 months later. See Findings, below, at paragraph 94. The Bureau also notes at this point that the WDEH renewal (BR-3075) was filed on April 27, 1955 as was the WHBT renewal. Both renewals were granted on July 20, 1955. See WHBT License File No. 2 and WDEH License File No. 1.

86. Application for renewal of the WHBT license was made on April 27, 1955. At this time, the associated balance sheet for F. L. Crowder showed total assets of $154,229.01, with station equipment for WHBT listed at $42,086.01, and for WDEH at $17,150.00. Liabilities included notes payable to Gates Radio Co. and the First National Bank, Harriman, in the respective amounts of $11,423.00 and $14,540.00. Net worth for Crowder was set at $103,532.44. WHBT License File No. 2 (BR-1664).

87. On June 22, 1955, Crowder engaged Blackburn-Hamilton to sell WHBT. WHBT Ex. 16.[1] Following, on May 10, 1956, application was made for assignment of WHBT to Folkways Broadcasting Co., Inc. (BAL-2321). At the time, Crowder gave as his reason that he desired to withdraw from the broadcasting business in Harriman. He reported the original cost of WHBT station equipment to be

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[1] On the same date he also put WDEH up for sale. WHBT Ex. 25.

$53,102.70 and its present value as $18,649.52. WHBT License File No. 2; T. 1681.

88. The agreed purchase price was $80,000, with $10,000 down and the balance in eighty three installment payments of $835.00 each, with a final installment of $695.00.2/ WHBT License File No. 2. (BAL-2321). The sale price $80,000, less the present value of the equipment, $18,649.52, comes to $61,350.48, the profit of Crowder from the sale of the WHBT license.

89. The Commission consented to this assignment on June 13, 1956 and it was consummated on July 1, 1956 with Folkways Broadcasting Company, Inc., assuming operating responsibilities as of that date.

Matters Relating to the Acquisition and Sale of Radio Station WDEH, Sweetwater, Tennessee

90. Application for construction permit for WDEH (BP-9334) was filed by The Harriman Broadcasting Co., Inc. (F. L. Crowder 100% owner) on June 9, 1954. Total estimated cost of construction was given at $17,816.00. WDEH License File No. 1.

91. The construction permit was granted on September 15, 1954. Shortly thereafter, on December 14, 1954, the Commission consented to the assignment of permit (BAP-253) from The Harriman Broadcasting Co., Inc., to F. L. Crowder, tr/as The Harriman Broadcasting Co., an individual. The assignment of permit was consummated on December 31, 1954. As previously noted, the

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2/ Crowder sold only the fixed assets and land. Accounts receivalbe and cash were retained. Crowder agreed, however, to convey all property free from lien or debt.

assignment of license for WHBT and of permit for WDEH were accomplished simultaneously. WDEH License File No. 1.[1]

92. On February 1, 1955, application for license (BL-5625) was filed, giving total construction costs of $17,150.00. This application was granted February 17, 1955. WDEH License File No. 1.

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[1] Crowder testified that he was caused to sell WDEH and WHBT due to ill-health, but acknowledged that he had not advanced this as his reason prior to January 3, 1964. T. 267-268, 1601-1602.

Scarborough testified that he worked for Crowder from 1952 until WHBT was sold in 1956; that during this time Crowder was operating WHBT and was there in the course of such operation; and that, as far as Scarborough could tell, he was in good health. T. 1385, 1389-1390. Scarborough added that Crowder did not complain to him about having bad health. T. 1390.

Crowder explained his later statement as to his health, saying that, due to management problems at WDEH, he had become a "nervous wreck; that he consulted a physician and that the physician advised: "Well, the only thing I can tell you is get out the radio business if that is what is causing you to be so nervous." As a result, Crowder testified, he took steps to sell these stations. An affidavit from the Physician consulted was not supplied. T. 1700-1701.

93. Application for renewal of license (BR-3075) was filed April 27, 1955. Attached was a balance sheet, listing WDEH at a value of $17,150.00. The renewal was granted July 20, 1955. WDEH License File No. 2.

94. On June 22, 1955, Crowder signed an employment agreement with Blackburn-Hamilton Company engaging it to sell WDEH. WHBT Ex. 25.[1] On February 14, 1956, application was made to assign WDEH to Marto Broadcasting Co., Inc. (BAL-2240). See T. 1679. However, this application was withdrawn on July 25, 1956. Then on July 30, 1956, a new assignment proposal (BAL-2399) was lodged with the Commission. This proposed to assign the license to WDEH, Inc. The consideration was $52,500, with $10,000 down and 12 installments of $500 each, followed by further installment pay-

ments of $600 per month until the balance owed was paid. The assets sold were the broadcasting station equipment, certain real estate, and specific operational contracts. The original cost of these assets was listed as $31,147.50 and its present value as $29,985.10. Cash and the accounts receivable were retained by Crowder. WDEH License File No. 2; T. 210-224; See also 233-245, 1644-1645.

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[1] On the same day, June 22, 1955, as previously found, Crowder executed an identical agreement engaging Blackburn-Hamilton to sell WHBT. WHBT Ex. 16.

95. Crowder gave as his reason for the sale simply that he desired to withdraw from the broadcasting business in Sweetwater at that time. See T. 1483-1485, 1618-1620, 1646-1647. As part of the application (BAL-2399), A. D. Smith, Jr., on behalf of the assignee, included this statement:

> "Mr. Crowder had an unfortunate experience during last year with two different managers-- they were not completely honest in their business dealings, with the local people or Mr. Crowder. This had a very bad effect financially on WDEH.
>
> "The first of this year, Mr. Crowder was fortunate in securing a new manager who has shown a very steady increase in business every month." (BAL-2199, Letter August 1, 1956, A. D. Smith, Jr., to the Commission). [1]

Commission consent was given on August 29, 1956 and the assignment was consummated September 5, 1956. WDEH License File No. 2.

96. As a result of this transaction, Crowder realized a profit of $22,504.90 ($52,500.00 sale price less present value of $29,995.10). Adding this to the profit from the sale of WHBT, $61,350.48, his dealing brought him $91,345.58.

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[1] This quotation is not given for the truth of what was stated, only for the fact that the statement was made.

Radio Station WLIV

97. Application for construction permit for WLIV (BP-10326) was filed January 23, 1956 by F. L. Crowder and R. H. McCoin, d/b as Audio Broadcasters. WLIV License File No. 1.[1/]

98. At the hearing WXXL witness Crowder testified that he had agreed privately with McCoin that he would be active only in formulating the plans for filing for WLIV; seeing that these plans were carried out, that is, contacting the consulting engineer and a lawyer; and taking the necessary steps to put the station on the air. Also Crowder testified that he had made it absolutely clear to McCoin, his 50-percent partner, that he would not participate on an active basis in the day-to-day operation of the station. T. 1717. Record evidence adduced by WXXL tend to show that Crowder was not active at all in WLIV's operation. T. 1308-1329, 1374-1378, 1412-1415, 1424-1428.

99. Crowder acknowledged that he did not disclose these arrangements to the Commission, and, in fact, had represented in the application that he would serve as "General Manager" of the Livingston facility. T. 1717.[2/]

[1/] To place this filing date into the context of events, this was (January 23, 1956) approximately 6 months after Crowder listed WHBT and WDEH for sale with Blackburn-Hamilton (June 22, 1955); about 5 months prior to filing for assignment of the WHBT license to Folkways (May 10, 1956), and 6 months prior to filing the WDEH assignment application, (July 30, 1956).

[2/] At the time this represenation was made, Crowder was a broadcaster of some experience and he recognized that the application as filed fairly represented to the Commission that he would serve as "General Manager" when the station became operational, as contrasted to the period of construction. T. 1718. Crowder explained that he made an error in this regard and should have notified the Commission of what the actual plan was. T. 1718. This was an error which was not soon corrected. It was repeated in the WLIV renewal applications (BR-3365) filed May 6, 1958, and May 2, 1961. This representation was not changed until the April 28, (Footnote continued on following page)

100. Anticipated costs of construction were set at $11,875.00 and this was to be financed through "New Capital" of $15,000.00. The partnership agreement called for each partner to contribute capital of $7,500.00, the total needed for construction. WLIV License File No. 1 (BP-10,326).

101. The Commission granted the application (BP-10,326) on May 3, 1956. A modification (BMP-7341) was filed on August 20, 1956, with no change in construction costs mentioned. Application for license (BL-6402) to cover construction permit (BP-10,326) and the modification (BMP-7341) was submitted on November 15, 1956. Therein the construction costs were recorded as $12,423.90. WLIV License File No. 1.[1/]

(Footnote 1/ continued from preceding page).

1/ 1964, renewal of WLIV was submitted, a date subsequent to the one on which application was made to assign the station to McCoin (April 14, 1964). WLIV License File No. 2.

[1/] In December of 1956 Crowder and his wife purchased several building lots and a residence in Livingston, Tennessee, a community approximately 75 miles from Harriman. WHBT Ex. 3; T. 1482-1483. Subsequently, this residential property was enlarged by Crowder by the addition of a garage. WHBT Exs. 4A and 4B; T. 277, 346. In 1957, and for some years following, Crowder spent Tuesday, Wednesday and Thursday night at his Livingston home and the other days at his Harriman home. T. 343. Subsequently, Crowder sold this property, but maintained an apartment over his bottling plant in Livingston. He testified that he then stayed at his apartment Monday through Thursday nights and returned to Harriman on Friday, then travelled back to Livingston on Monday. T. 344-345, 350-351, 1487-1488, 1607-1608. At present, he lives at his Harriman home, which he has maintained for 21 years, but still has his apartment over the bottling plant in Livingston. T. 202, 345, 1492.

Crowder has been the sole owner of the 7-Up Bottling Plant in Livingston, Tennessee since 1956. This business has grown and profited. His franchise is for a 15-county area, part in Tennessee and some counties in Kentucky. Crowder places a value of $239,599.13 on the "building and plant equipment" used in this business. T. 262-265, 300-301, 1615.

102. The partnership's pro forma balance sheet (accompanying BL-6402), as of November 14, 1956, showed cash in bank of $2,576.10 and broadcast equipment of $12,423.90, with liabilities (partnership interest) of $7,500 each (total of $15,000) for McCoin and Crowder. The station was licensed by the Commission on November 26, 1956. WLIV License File No. 1.

103. Application for renewal of license (BR-3365) was filed May 5, 1958. F. L. Crowder was listed as "General Manager" at Section IV, page 3, paragraph 12. WLIV's (Audio Broadcaster's) balance sheet as of January 1, 1958 showed cash of $7,281.85; broadcast equipment of $17,763.90; furniture and fixtures, $3,321.79; and accounts receivable $9,781.25, for a total of $38,148.79. Liabilities came to $5,894.29, with net worth given as $33,254.50.[1/] Renewal was granted July 2, 1958. WLIV License File No. 1.

104. Application for renewal was filed May 2, 1961 (BR-3365). Again, Crowder was listed as "General Manager" of the station. The January 1, 1961 balance sheet showed cash of $1,387.62; broadcast equipment of $16,298.90; furniture and fixtures of $3,496.23; and accounts receivalbe of $16,455.30, totalling $37,638.05. Accounts payable were set at $1,051.77 and net worth given as $36,585.28. Renewal was granted July 31, 1961. WLIV License File No. 2.

[1/] This is apparently in error by $1,000.00, since the figures for liabilities and net worth agree to $39,148.79, not $38,148.79.

105. On April 14, 1964, application was made to assign the license to McCoin. Crowder was to withdraw from the partnership (BAL-5077, BALRE-1094). As part of this application, McCoin and Crowder recited that McCoin had been the active manager in charge of the day-to-day operation of WLIV; that McCoin desired to dissolve the partnership by purchase of Crowder's interest; and that McCoin had agreed to pay Crowder $50,000 for his 50-percent interest and that Crowder had agreed to accept this offer. WLIV License File No. 2; T. 1489-1490, 1593-1596, 1645.

106. The agreement of sale called for conveyance of license; physical assets and other property and equipment used in the operation of WLIV, but it specifically excluded undistributed profits (cash and accounts receivable) credited to F. L. Crowder's capital account on the partnership books as of "Closing Date," and, prepaid items which "should be prorated as of Closing Date." WLIV License File No. 2 (BAL-5077).

107. A balance sheet for the partnership licensee was not furnished with this assignment application (BAL-5077). However, while it was pending, the WLIV renewal was filed (BR-3365, April 28, 1964). As part of the renewal, the partnership balance sheet, as of April 1, 1964, showed cash of $8,682.25; equipment $16,298.90 with depreciation taken of $16,298.90, leaving a "zero" balance; furniture

and fixtures, $4,513.00; and accounts receivable of $20,113.95, totalling $33,309.20. Under liabilities, there was accounts payable of $671.65 and a net worth of $32,637.55. WLIV License File No. 2.[1] The Commission consented to this assignment on May 11, 1964. Following, on June 9, 1965, McCoin filed an application to assign his interest in the licensee to WLIV, Inc., for a stated consideration of $130,000.

108. As found, Crowder invested a total of $7,500 in WLIV. At the time of sale, the assets had been fully depreciated. Thus, Crowder had recovered back the full amount of his investment and his basis for gain was "zero." The total $50,000 he received, therefore, was profit.

109. In addition for each year of operation Crowder testified he drew from $5,000 to $6,000. T. 1699-1700. Noting his assurance that he was not active at all during operational phases of the station's existence and further assuming operation from January 1, 1957 to January 1, 1964, 7 years, Crowder would have taken out as profit a minimum of $35,000. This is to be considered in light of

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[1] F. L. Crowder filed his application for WXXL on October 4, 1961. Crowder's balance sheet as of July 31, 1961 shows total assets of $351,609.48; liabilities of $87,900.48; and a net worth of $263,709.00. The Crowder balance sheet of June 30, 1966, filed with his application for an FM broadcast station to operate at Harriman, lists total assets of $381,012.16; liabilities of $82,985.70; and net worth at $298,026.46.

his contract right to one-half of the accounts receivable at dissolution of the partnership, shown to be approximately $20,113 at the time. Such would have brought him an added $10,000.

110. As a total, then, Crowder would have realized a profit or $50,000, and had received other payments (as disbursement of profits) which would approach an additional $50,000, or in all $100,000. Adding this to his previous profit of $91,345.58 on the sale of WHBT and WDEH, the figure involved in over $190,000.

111. As indicated, Crowder's net worth is now about $298,000. His net worth at the commencement of his broadcast ventures was as shown, $54,481.67. The difference in these two net worth figures comes to $243,518.33, $190,000 of this is attributable to gains in the sale and investment in radio properties. Thus, as an ultimate finding, the Bureau proposes that Crowder, as a fact, profited in each sale, and that this profit has been of substantial magnitude in his overall capital growth picture.

Matters Relating to the Motive and Intent of Crowder to Traffic in Broadcast Authorizations -- Testimony of Harry T. Burn.

112. Harry T. Burn was called as a witness for WHBT.[1] Burn is a 16-year resident of Rockwood, Tennessee; a lawyer; and a banker.[2] At present, he is a director, Chairman of the Board, and

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[1] The subject matter of his testimony was not included in any of the pre-designation pleadings and, therefore, was not before the Commission at the time it issued its January 12, 1966 opinion in Harriman Broadcasting Co., 2 FCC 2d 320 (1966).

[2] Burn and his family control the First National Bank and Trust Company, the bank to which reference is made in the text of the findings. T. 403-404.

Trust Officer and member of the Executive Committee of the First National Bank and Trust Company of Rockwood. T. 367, 404.

113. According to Burn, his first business transaction with Crowder was in the negotiations to establish auxilliary studios for WHBT in Rockwood. This was at the time Crowder owned and controlled the station, in about 1951 or 1952. T. 370, 377. But Burns said he knew Crowder socially prior to these negotiations. T. 370, 372.

114. Such studios were built on the third floor of Burn's bank building in Rockwood[1] and leased and occupied by WHBT for approximately five years. T. 376-377, 445.[2]

115. At the time of the negotiation of the lease, Burn said he saw Crowder in the bank building every few days and visited with him occasionally, more on a social than a business basis. After this, according to Burn, he kept in contact with Crowder. T. 378. Burn placed these meetings in point of time at thirteen to fifteen years ago, or in 1952 or 1954. T. 377, 430.

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[1] Burn has his law offices in the bank building on the second floor and, together with his banking duties, he was in the building on a consistent basis. T. 446.

[2] Burn was not certain whether the lease was for a five year or a three year term. T. 377, 446. He did recall, however, that he and Crowder had worked together for three or four years on plans for the remote studio for WHBT at Rockwood. T. 433. Apparently, Burn did not favor establishment of the Rockwood station because he thought it financially not feasible and fostered the idea of having WHBT studios at Rockwood to meet local needs. T. 432-433.

The bank spent between $3,000 and $4,000 in remodeling the space to accommodate it to radio needs. T. 445.

The studios were vacated a few weeks after WRKH commenced operation (May 9, 1957). T. 446. (See findings 116, _et seq._)

116. Burn testified he had a subsequent conversation with Crowder concerning radio broadcasting. T. 378, 430. This conversation is alleged to have taken place about 10 years ago when "some financial interests from McMinnville, Tennessee," sought and obtained a construction permit for a new standard broadcast station at Rockwood.[1] T. 430-431.

117. According to Burn, this (the fact that there were plans for a new station at Rockwood) became known around the time Crowder was negotiating the sale of WHBT and WDEH. T. 379.[2] At about this time Burn met Crowder and told him that he, Burn, regretted seeing another station come into Rockwood because of economic considerations. T. 432, 448, 450, 469. Crowder is alleged to have responded, in effect, that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income through a subsidy, and then selling the station. That, according to Burn, was the reason Crowder expressed no concern with the potential of local competition

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[1] This places the conversation in about 1957. The station referred to is WRKH. Application for construction permit for this facility was filed on July 3, 1956. The permit was granted February 2, 1957, and WRKH commenced operation on program test authority on May 9, 1957. It was licensed on June 12, 1957. T. 449. This, of course, was after Crowder sold his interest in WHBT, the transaction for which had been consummated on July 1, 1956. See Findings at paragraph 89 above.

[2] The sale of WHBT was consummated July 1, 1956 and the WDEH sale consummated on September 5, 1956. See Findings at paragraph 95 above. T. 448. Also Crowder listed WHBT and WDEH with Blackburn-Hamilton on June 22, 1955.

from WRKH, since, "He didn't propose to operate a station anyway other than until the time he could sell it." T. 379, 436-437, 450.[1]

118. Burn further testified that he and Crowder had had other conversations of a "general nature," and one in particular after Crowder had filed his application for what is now WXXL. T. 380, 437-438.[2] On this occasion, Burn asked Crowder why he had undertaken to bring a third station into Roane County, why had he not applied for one in a community that had no other radio station, in keeping with what Burn had understood from Crowder was his business practice in the broadcast field. T. 381, 451, 463-464. In answer, according to Burn, Crowder explained that the management of WHBT was incompetent, that they had undertaken to operate a "metropolitan station" in a small town; that they had changed the location of the station on the dial from about the middle of the dial to the far right; and that they had increased power to 5000 watts. T. 381, 464-465.[3]

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[1] Burn did not definitely say when this conversation occurred. He believes it was about ten years ago "this spring," and that it took place in the lobby of the main office of his bank in Rockwood, Tennessee. T. 379. He could not place it more specifically because, "I naturally had a lot of conversations with him." T. 379. Later he said it was in April or May of 1957, T. 430-432 at about 10 o'clock in the morning. T. 431. Still later he set the dates in February or March of 1957. T. 449. No one except he and Crowder were present. T. 432. Burn testified that there were other times when Crowder expressed the same point of view on this matter. T. 436, 451, 470-472.

[2] Crowder's application for WXXL was filed on October 4, 1961. Burn testified that only he and Crowder were present when this conversation is alleged to have taken place. T. 438.

[3] Folkways Broadcasting Company, Inc., WHBT, made application to change frequency and power from 1230 kc, 250 watts, U., to 1600 kc, 5000 watts, Day, on July 10, 1957 (BP-11429). The construction permit was granted June 11, 1958.

Also, Burn continued, Crowder elaborated that a 5 kilowatt transmitter was more expensive to operate than the one used by himself when he operated WHBT; that management policies of this sort would ultimately create a serious financial problem; and that he wanted WXXL to be in a position to "fill the void." T. 381-382, 464-465.[1]

119. To establish interest and bias of their witness, it was brought out on cross-examination that Burn met Crosthwait about a year before he came to Harriman to operate WHBT. T. 384.[2] Further, it was established that Burn had caused his bank to lend WHBT money; and that his bank had purchased Crowder's note representing money owed to Crowder on the sale of WHBT. T. 386-387.[3]

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[1] Burn could not fix the date of this conversation. He did not recall any subsequent conversations. T. 382.

[2] Burn could not set the date precisely, but believes it was about two or three years after WHBT had been sold to Folkways Broadcasting Co., Inc. T. 384.

[3] Burn testified that the bank took over the note about ten years ago this spring. T. 386, 389. This would place the transaction in 1957. Counsel for Crowder requested that a copy of the note be supplied and the Hearing Examiner so ordered. T. 388. The note was so furnished to all parties by counsel for WHBT under cover of letter of May 25, 1957. The endorsement in question reads:

> "For value received, pay to the order of the
> First National Bank and Trust Company of
> Rockwood, without recourse.
> This the 2nd day of May, 1961
>
> F. L. Crowder
> Tommie Crowder"

The endorsement being in May, 1961, Burn could not be correct as to the date the bank purchased the note. This transaction, as shown, occurred in May of 1961.

120. It was further established from Burn that WHBT had been refinanced twice. It appears that after Burn's bank purchased the note, Folkways (WHBT) continued to make payments on it, and then, at a later date, the bank again refinanced "the whole thing." T. 390.[1] Burn admitted that he considered the potential competition from WXXL "quite detrimental" to the WHBT loan now owed to the bank. T. 392-393.

121. It was further established, again to show prejudice and interest, that Burn's bank had lent Crosthwait money on occasions prior to the purchase of the Crowder note; and that Crosthwait and WHBT were customers of the bank. T. 405-408. In addition, it was brought out that Burn owns stock in WOVE, Inc. the licensee of WOVE, Welch, West Virginia, and is Secretary-Treasurer and Director of the licensee. T. 440-443.[2] And, also, other loans have been made by the Burn bank to individuals to permit them to purchase interests in WOVE.

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[1] Burn did not recall the date "the whole thing" was refinanced. T. 390. It was later developed that the bank had lent $25,000 to WHBT on the first occasion (1961), plus taken a second note for $6,000.00 representing interest on the $25,000 loan. T. 454-467. The $6,000 loan was set up in a separate account, because the "loan limit" of the bank in such cases was $25,000.00 T. 393. Still later (the second refinancing), the bank lent an additional $25,000 to WHBT, the outstanding balance of which is now approximately $23,000. This was in 1966. T. 400-401.

The first refinancing, representing, in part, money paid to Crowder by the bank, was satisfied in full by WHBT out of operating earnings of the station during the first five years the note was outstanding. T. 394.

[2] Burn's personally denied that he was still an officer and director or stockholder of WOVE. He said at first that he had given the stock in WOVE to his son and later that he had only promised to do so and had not made delivery of the certificates. T. 408-415. The Commission's ownership files indicate that Burn is Secretary-Treasurer, and director, and a 17.1% stockholder. See FCC Form 323, for WOVE, Inc., filed July 1, 1966. T. 440-443.

T. 416-418. Lastly, it was shown that Burn's bank has extended a line of credit up to $15,000 to Folkways (WHBT) with which to finance construction and operation of its proposed FM station at Harriman. T. 421-424, 444-445.

122. On the subject of the Burn testimony, Crowder was specifically asked if it were not true that the reason he sold the stations here involved was in furtherance of his plan or scheme, previously adopted by himself and discussed with Burn, to make money in radio stations, not by operating them, but by building their rating up and selling them. Crowder replied, "I deny that 100 percent." T. 351.

123. As to the Burn testimony, Crowder recalled that he did establish a remote studio for WHBT at Rockwood and, to the best of his recollection, maintained it for a period of about three years. But he, in substance, denied he had negotiated with Burn for these studios. He said he knew Burn when he saw him, but that in his lifetime he had had only two business dealings with Burn, the first when he signed the lease for the Rockwood studios and the second in 1961 when he sold the WHBT note to Burn's bank. T. 1494.

124. Crowder explained that Burn was not a friend of his; not his banker; that they don't attend the same church and "politically,

we are on different sides of the fence." T. 1494-1495. Crowder categorically denied having seen or talked with Burn for a five year period prior to the day (May 2, 1961) he was called to the bank to sell his note. T. 1495.

125. As to the transaction involving the note, Crowder amplified that at the time of the sale of WHBT to Folkways Broadcasting Co., Inc., he took a note for $70,000 for the balance due. There was a clause in this note that allowed the makers to pay off the full amount if and when they wanted to do so. T. 1495.[1] This, Crowder said, was the reason he met with Crosthwait and Burn and others at the bank in Rockwood, in recognition that Crosthwait, representing the maker-corporation, Folkways, had a right to pay the note off and this is what they (Crosthwait and the corporation) wanted to do. T. 1496-1497.

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[1] The note itself reads in pertinent part: "Privilege is given to make additional payments of Eight Hundred Thirty-Five Dollars ($835.00) or multiples thereof, on the principal sums of this note at installment paying dates without penalty or interest."

126. Crowder was read Burn's testimony relating to the alleged meetings and conversations. Crowder denied that any of the conversations or meetings had occurred. T. 1499-1506. Also, Crowder denied that he had ever been a customer of Burn's bank; and, in particular, he denied that he had ever told Burn that the way to make money in radio broadcasting was to buy a station or acquire a construction permit, put it up, and sell it at a profit. T. 1513-1514.

127. As to the alleged conversation with Burn at the time he filed for the second station at Harriman, Crowder explained that he felt the cost of tubes in a year's operation would not be significant. He said he did not know what the cost of tubes in the final stage of a transmitter would be or whether the tube cost for a 1000 watt transmitter would be more than for a 250 watt transmitter. T. 1648-1649. In substance, he claimed that he really would not have known the particular significance of changing dial position or of the other matters attributed to him by Burn in that particular conversation.[1]

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[1] Crowder testified that he had little familiarity with the technical aspects of the operation of a radio station. For example, he thought it might cost more to operate a transmitter with 5000 watts compared to 250 watts, but was not certain what the costs would be. He said he had been told by his consulting engineer that he could get about as much coverage with 500 watts power on 970 kc as could be accomplished with 5000 watts on 1600 kc, but testified he would not have sufficient knowledge of his own to know whether this was so or not. In general, he professed to have little if any knowledge on technical phases of operation of radio stations and on such things he said he had to rely on advice from his consulting engineer. T. 1703-1704.

128. As to the establishment of WRKH, Crowder testified that he had been unaware that some people in McMinnville, Tennessee, were interested in building a station in Rockwood at the time he was operating WHBT. He said he learned this only after he had sold WHBT and could not recall having had any conversation with anyone (and Burn in particular) either in Rockwood or Harriman concerning people from McMinniville looking around Rockwood with a view toward establishing a radio station. T. 1681-1682. Later Crowder acknowledged that he had heard that a Mr. Spivey from McMinnville had applied for a construction permit for Rockwood, but he could not recall when he learned this. T. 1697-1698.

129. Finally, Crowder affirmed, without any reservations whatsoever, that the only times he had contact with Burn was when the lease for the remote studios for WHBT was signed (the first time) and when he sold the WHBT note to Burn's bank (second time), aside from one casual meeting at a political rally. He said he did not know where Burn lives; has not seen him at any meetings of civic organizations in Roane County; or at social clubs; or even walking along the street. T. 1710-1713.

* * *

and also of WHBT. Then, on June 22, 1955, Crowder engaged Blackburn-Hamilton to sell both stations.

20. Blackburn-Hamilton was successful in disposing of WHBT in the early part of 1956, and application was made on May 10, 1956 to assign the license to the purchaser, Folkways Broadcasting Co., Inc. Subsequently, Blackburn-Hamilton found a purchaser for WDEH and on July 30, 1956 application was made to assign that license to WDEH, Inc.

21. On January 23, 1956, at about the time Crowder was negotiating the sale of WHBT and WDEH, he and R. H. McCoin, his brother-in-law, joined in filing for a new facility for Livingston, Tennessee. Each held a 50% partnership interest in the applicant.

22. In the WLIV application, Crowder was represented as the proposed station's general manager. However, he had made private arrangements with McCoin whereby it was agreed that Crowder would not participate actively in the affairs of the station. The findings show that he did not so participate.

23. Crowder held his interest in WLIV until April, 1964, when he sold it to McCoin. McCoin, in turn, disposed of the station in June, 1965.

24. In these three transactions, Crowder realized profits of some magnitude. But, standing alone, the conclusion cannot be

drawn that Crowder trafficked in broadcast authorizations, for from them the necessary element of intent cannot be demonstrated or even inferred. Thus, resolution of this issue must be based on further considerations, those relating principally to the testimony of Harry T. Burn, testimony placed in sharp dispute by Crowder.

25. To put the disputed matters in proper context, the findings show that Burn has been a resident of Rockwood, Tennessee, for some 16 years. He is a lawyer and banker and his principal place of business is in Rockwood, but his bank has a branch at Harriman, 9 miles from Rockwood.

26. Burn testified that prior to 1951 or 1952 he had known Crowder socially, but at about this time he commenced negotiating with Crowder to establish remote studios at Rockwood which then had no local facility of its own.

27. Following the negotiations, which were successful, Burn caused studios to be built in his bank building on the floor above the one on which Burn's law offices were situated. This was some time between 1952 and 1954.

28. During this time, Burn testified he saw and visited with Crowder in the bank building, and, from this time on, 1952-1954, he kept in contact with Crowder socially.

29. Crowder denies he had any such negotiations or conversations with Burn, stating categorically that he had met with or talked with Burn

only twice in his entire lifetime, when he signed the lease for the remote studios in the 1950's and in 1961 when he sold his WHBT note to Burn's bank.

30. Burn then testified that in about 1956, when it became known that some financial interests from McMinnville, Tennessee, were looking to build a station in Rockwood, he had a further conversation with Crowder. At that time, according to Burn, he met Crowder and told him that he, Burn, regretted seeing another station come into the county because of economic considerations. Crowder responded, Burn testified, that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income through a subsidy, and then selling the station. That, according to Burn, was the reason Crowder expressed and showed no concern over the threat of competition from the Rockwood station, since, "He didn't propose to operate a station anyway other than until the time he could sell it."

31. Crowder denies any such conversation occurred, stating categorically that in neither of the two meetings with Burn had he ever expressed such an intent or business practice.

32. Burn further testified that he and Crowder had other conversations dealing with Crowder's broadcast business policies.

In one of these, Burn recalled, he had learned that Crowder was applying for a new station at Harriman. This was in 1961. Burn asked Crowder why he had undertaken to bring a third station into Roane County, why had he not applied for one in a community that had no other station, in keeping with what Burn had understood from Crowder was his business practice in this field. According to Burn, Crowder explained that the management of WHBT was incompetent; that they had undertaken to operate a "metropolitan station" in a small town; that they had changed the location of the station on the dial from about the middle thereof to the far right; and that they had increased power to 5000 watts. Crowder elaborated, still according to Burn, that a 5 kilowatt transmitter was more expensive to operate than the one used by himself when he operated WHBT; that management policies of this sort would ultimately create a serious financial problem; and that he wanted to be in a position to "fill in the void."

33. Crowder emphatically denies this conversation occurred. Crowder professed to know little of the technical aspects of station operation and, for example, said he would not have known that changing dial position would have had such significance and denied generally that he had sufficient background knowledge in broadcast matters to have made the other statements attributed to him by Burn in this particular conversation.

34. Crowder, in denying that any of these things testified to by Burn were true, emphasized that Burn was not a friend of his; not his banker; not a member of his church; and not a member of the same political party. Further, Crowder averred that he had not seen Burn at any meetings of local civic organizations; or at social clubs; or even walking along the street.

35. The record establishes beyond all question that Burn was an interested witness whose testimony might be expected to favor WHBT, which it did. However, recognizing Burn's interest and friendship with Crosthwait, the principal owner of WHBT, is strong, it does not follow that his testimony must be rejected. Significantly, the facts taken as a whole are consistent with what Burn testified to. For example, WHBT remote studios were in fact built at Rockwood in Burn's bank building. They were leased and occupied for a number of years by WHBT when Crowder was owner and operator of the facility. Mr. Spivey from McMinnville did come to Rockwood to establish WRKH. This was, as claimed by Burn, at about the time Crowder was selling WHBT.

36. Moreover, it is difficult to believe that these studios would have been built by the bank in its building without any contact at all between Burn, their chief sponsor, and Crowder, who was then in Harriman at WHBT. It seems reasonable that with the use being so

specific (radio studios) there would have had been negotiations with Crowder and actual supervision and inspection of them by him as the work progressed at Rockwood. For Crowder not to have been there at all, as would have to be the case if Crowder is to be believed, is simply not credible.

37. Further, it would seem reasonable for Crowder to have possessed the type of knowledge that would have enabled him to relate to Burn his reasons for filing for the second station at Harriman, an apparent contradiction in his former policies. In this regard, it would seem that Crowder would have readily known the significance of the change of dial position and of the expense involved in operating a station with a 5000 watt transmitter compared to one with 500 watts power, that was used by Crowder at WXXL. In these circumstances, the conflict in the testimony must be resolved in favor of Burn and Crowder's denial that these conversations occurred must be rejected.

38. It must also be concluded that Crowder misrepresented himself to be the sole owner of the Harriman Billiard Parlor in applications submitted by himself; and in holding himself out as the "general manager" in the WLIV application for construction permit and in renewal applications filed by the licensee of that station. It must further be concluded that Crowder was not candid in his testimony in denying that his station had any trade accounts; and

in his testimony, in general, relating to the rates his station was charging and their relationship to the published rates. These matters lend weight to the conclusion that Burn's testimony is to be accepted, notwithstanding his admitted financial interest in WHBT and his close association with Crosthwait.

39. These factors lead to the ultimate conclusion that in the sale of WHBT and WDEH the requisite intent to traffic was present. This is particularly so with respect to WDEH, for the findings provide a sufficient basis for the inference that with respect to it the trafficking intent was formed and adopted by Crowder prior to the time construction of the station was completed (February 1955) or at the very latest by June 22, 1955, shortly after its construction, when Crowder listed it for sale, together with WHBT.

40. With respect to WLIV, the intent to traffic is not so well defined, for Crowder kept his interest in that facility for some years. However, for purposes of decision in this case, it is concluded that it is not necessary to consider the Livingston transaction in arriving at a determination under the trafficking issue.

41. During the course of this proceeding, Crowder maintained, without any further corroboration, that the reason he sold WHBT and WDEH was due to ill health. This contention, the accuracy of which was challenged by WHBT, was advanced for the first time in the pleadings filed by Crowder and in testimony given at the hearing.

However, even if this explanation is accepted, it does not dissapate Burn's testimony that Crowder's intent to traffic was present and it must be concluded that such intent was the underlying force in his decision to sell WHBT and WDEH.

42. In the light of these considerations, the question for decision is whether the facts are sufficient to justify an adverse conclusion under the trafficking issue. We believe they are. While there may be some question as to whether the WLIV transaction constituted trafficking, it is patently clear that the two sales (WHBT and WDEH) consummated in 1956, when examined in the light of Burn's testimony, require a conclusion that Crowder engaged in the trafficking of broadcast licenses. As noted, the question of whether there was trafficking in the third instance (WLIV), therefore, need not be resolved.

43. In reaching this decision, we note that the Court of Appeals here ruled that the trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. The Court emphasized that licenses cannot be granted in the public interest to those that seek them for sale rather than service. In Crowder's case, the Court said, the question is not whether the trafficking intent arose prior to 1950 (when Crowder had a minority interest in WHBT), but whether it arose at all. Folkways Broadcasting Co., Inc. v. Federal Communications Commission, supra, 8 RR 2d 2089, at page 2093. That it did arise and was implemented, there can now be no doubt. The

findings demonstrate this to be so. In such circumstances, the law requires denial of Crowder's application for WXXL. Edina Corp. et al., 4 FCC 2d 36, application for review denied, FCC 66-946, released November 4, 1966.

Accordingly, the application of F. L. Crowder tr/as Harriman Broadcasting Company (WXXL) must be denied.

Respectfully submitted,
George S. Smith
Chief, Broadcast Bureau

by Thomas B. Fitzpatrick
Chief, Hearing Division

John B. Letterman
John B. Letterman
Attorney
Federal Communications Commission

June 12, 1967

CERTIFICATE OF SERVICE

Joyce G. Cox, a secretary in the Hearing Division, Broadcast Bureau, certifies that she has this 12th day of June, 1967, sent by regular United States mail, U. S. Government frank, copies of the foregoing "Broadcast Bureau's Proposed Findings of Fact and Conclusions of Law" to:

Donald E. Bilger, Esquire
1101 17th Street, N. W.
Washington, D. C. 20036
Counsel for Harriman Broadcasting Company

John B. Kenkel, Esquire
Miller & Schroeder
808 Munsey Building
Washington, D. C. 20004
Counsel for Folkways Broadcasting Company, Inc.

Joyce G. Cox
Joyce G. Cox

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY)
)
For Construction Permit)

DOCKET NO. 17255
File No. BP-15122 JUN 13 1967

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6-12-67

TO THE HONORABLE, THE MEMBERS OF SAID COMMISSION:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

OF

FOLKWAYS BROADCASTING COMPANY, INC. (WHBT)

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and the necessity to reject any of Crowder's assertions on disputed points in view of the wholesale number of instances in the record of Crowder's equivocation, lack of forthrightness and demonstrated inconsistencies in testimony and representations to the Commission.

E. Further Aspects of Trafficking - The Contrived "Community Survey" (Herein of Misrepresentations and Nondisclosures as to Community Need and Demand for Crowder's Station).

57. Crowder's above-captioned application for a new station to operate on 970 kc at Harriman, Tennessee was executed by him on September 30, 1961. It was filed with the Commission on October 4, 1961. At the time it was filed the

application contained a program schedule, but absolutely no showing as to the reason for its filing nor any showing of an expression of need, desire or interest on the part of the community for the station (BP-15122, Tr. 278). The application indicated that notices and communications should be sent to the individual applicant, F. L. Crowder at P. O. Box 39, Livingston, Tennessee (Tr. 303). The attorney who represented him at that time sent Crowder a letter informing him that a community programming survey was needed (Tr. 1356, 1519).[35] On November 13, 1961 Crowder filed, under his oath of November 8, an amendment to the application informing the Commission that he wished to amend the programming portion thereof, *viz.*, Section IV, to show that a community programming survey had been made. His language was that the amendment, in that respect, "consists of letters evidencing our efforts in surveying the community and its needs." (Tr. 279, BP-15122, WHBT Ex. 37). The amendment, and the letters, were submitted to the Commission with the intention of representing that a programming survey had been made (Tr. 1522-3).

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[35] In 1960 the Commission had released its *Report and Statement on Programming Policy*, 20 R.R. 1901. Therein the Commission had pointed out, *inter alia*, that program policies must be "prepared as the result of assiduous planning and consultation covering two main areas: first, a canvass of the listening public who will receive the signal and who constitute a definite public interest figure; second, consultation with leaders in community life - public officials, educators, religious, the entertainment media, agriculture, business, labor - professional and eleemosynary organizations, and others who bespeak the interests which make up the community." Furthermore, the Commission had at that time just released its *Suburban Broadcasters* decision, 20 R.R. 951, denying an application for lack of a showing that the program proposals were based upon ascertained needs of the proposed service area.

58. The letters contained such statements as that Crowder's proposal for a second radio station in Harriman "would be a great help to our educational activities in Harriman" (WHBT Ex. 36-B), that "from the viewpoint of my official capacity as President of the Roane County Chamber of Commerce we will most heartily welcome a new business and new voice into our community" (WHBT Ex. 36-L), that "We of the Harriman Business Association feel that there is a great hope for a renewed business and civic effort in the community and we know that an added public facility will be of great help in this effort. I am particularly interested in the plans you have discussed with me for giving the people a better understanding of the businesses and businessmen through special programs that you plan as a public service" (WHBT Ex. 36-M) and that Crowder's "offer of 'public service' advertising...will aid us greatly" (WHBT Ex. 36-J). Crowder's sworn amendment, filed with the intention of representing to the Commission that a community need survey had been done in connection with the application (Tr. 1521), consisted of fifteen letters all addressed to Mr. F. L. Crowder, and all were on the letterheads of various local, state and national organizations. They were addressed to Mr. Crowder at Harriman, Tennessee. The letters were from the Superintendent of Harriman City Schools, the Harriman American Legion Post, the Mayor, the Roane County Chapter of the American Red Cross, the Harriman Business Association, the Roane County Chamber of Commerce, the Tennessee Farm Bureau Federation, the National Music Camp, the National Education Association, the University of Tennessee Department of Broadcasting

Services, and such program suppliers as Georgetown University, the B.B.C., the Tennessee Highway Patrol and the Southern Baptists' Radio and Television Commission (WHBT Ex. 36 A-M, Tr. 1721-4).

59. Crowder did not further amend his application and sat back awaiting Commission review and grant thereof on the basis of those representations. Following Commission announcement that the Crowder application was being readied for final consideration and any parties in interest desiring to file a petition to deny might do so, such a petition to deny was filed by Folkways Broadcasting Company, Inc., the licensee of WHBT. (Off. Not. and Tr. 230). Pertinent to the instant findings, the WHBT petition raised the issue of both the sufficiency and bona fides of Crowder's sworn representation, in the November 8, 1961 affidavit, of the applicant's "surveying the community and its needs". The petition, with documentary backing, showed that at least three of the letters, namely those from the Harriman City Schools, the Roane County Chamber of Commerce and the Harriman Business Association, were not the official expression of the organizations which the letters purported to indicate. Further, so far as WHBT had been able to ascertain at that time, at least the Harriman City Schools' letter, written by a Mr. Black, and the Harriman Business Association letter, signed by Mr. Harmon, had been prepared for their signature without any discussion with applicant Crowder, the preparer being an individual not identified in any way in Crowder's application, namely, Walter Scarbrough (WHBT Petition to Deny, Off. Not.). Crowder understood that WHBT's Petition to Deny required a response by him, and he filed such a response being his sworn Opposition to Folkways' Petition

to Deny filed on January 8, 1963. The sworn Opposition included the affidavit of Walter Scarbrough, which explained his and Crowder's actions in connection with the community survey, as well as statements in the body of

the Opposition with respect thereto. Under oath, Crowder stated that the representations in the Opposition were "true and correct to the best of my knowledge and belief".(Tr. 231, 234-5, and see Tr. 1419-20).

60. In the pleading Crowder recited, under oath, that "none of the letters submitted were submitted as representing the opinion of a group or organization but only as representative of the signatory's opinion" and he went on to say that "the contacts made by Mr. Scarbrough were made in such a manner that the contacted parties were completely and fully apprised of the facts". He submitted the affidavit of Mr. Scarbrough and said "the sworn statement of Mr. Walter H. Scarbrough ... completely and fully sets forth the manner in which these contacts were made in which the letters were obtained." (Tr. 1588). The Scarbrough statement, which Crowder stated to be true, contained such representations as "it was pointed out to each [of the persons from whom the letter had been obtained] that their statement was desired only to substantiate the fact that they had been contacted about the planned programming as it was felt by Mr. Crowder and his attorney that the Commission would desire this information.*** Although civic community club leaders were contacted, not a single person was asked to speak for his group, but only as an individual, unless the matter were taken up and official approval of the group's governing board was given ...." The Scarbrough statement went on to say that he had jotted down "some representa-

tive ideas" which might be used by the respondents in making their statements but "this was not done with the idea of writing a statement and just asking them to put their signature on it". Further, he said "in all cases the suggested statement was changed before the final letter was submitted, by mail from the individual citizen and not read by me to Mr. Crowder for submission with his application." (Scarbrough affidavit of December 31, 1962, identified at Tr. 1418 and WHBT Ex. 35). 36/

61. With these representations of Crowder, the Commission ultimately granted his application without a hearing, finding that on the basis of the explanation "a survey was conducted on the applicant's behalf" (January 14, 1966 Memorandum Opinion and Order). When the January 14, 1966 grant-without-a-hearing was appealed to the U. S. Court of Appeals, both the Commission and Crowder contended that albeit the programming survey may have had some deficiencies,there was indeed a survey. With the above-noted explanations in the record, the Court held that the Commission's conclusion with respect to the adequacy of the survey and as to the absence of any misrepresentation or concealment with respect thereto would not be set aside, although the aspects of possible concealment and misrepresentation were weighed under the trafficking question and appreciably strengthened the necessity for a new determination as to whether Crowder could be found to be qualified. (See January 5, 1967,

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36/ A further reference will be made to the Scarbrough statement adopted and sworn to by Crowder in his pleading, but at this juncture it should be found that Crowder submitted the statement under his own oath which included the statement that every letter in the so-called community survey material had been submitted directly to Crowder by the writer and not even read by Scarbrough. The pertinence of this finding will be pointed out *infra*.

Decision, cited supra). The aforegoing findings have been set out first in this section of the Findings because they indicate the basis upon which the initial "clearance" was given. The following findings show (a) that the attempted misrepresentations and concealments in the obtaining and filing of the so-called "community survey" material contained even more concealments and misrepresentations than initially contemplated by either the Commission or the Court, and (b) that the excuses and explanations proffered by Crowder in his sworn earlier "explanation" itself contained misrepresentations and concealments.

In some instances the following findings will repeat earlier ones relative to Crowder's first or second explanation so they may be read together against the facts as developed on this record.

62. When the Harriman application was filed, Crowder was busy enlarging his bottling plant in Livingston, spending Mondays through Thursdays there, and didn't have time, according to him, to make any survey of the community's needs and desires (Tr. 344, 1356, 1519). One day Crowder went to Scarbrough's home and told Scarbrough that he had received a letter from his attorney in Washington indicating the need for proof of a community program survey, stating that letters were required "substantiating the fact that the proposed programming for his proposed new station had been discussed with them". Scarbrough saw the letter from the attorney, and agreed to help Crowder obtain such letters. (Tr. 1256, 1358).[37/]

[37/] See Fndg. 57, Fn. 35, supra. A request for production of the letter was made, but Crowder said he hadn't kept a copy (Tr. 1721-2).

63. When Crowder asked Scarbrough to help him prepare a showing that a community survey had been made, the request occurred during a "casual visit at his home". There was no meeting or discussion between the two, and Crowder did not discuss with Scarbrough his programming plans or show him any of the material. (Tr. 1714). As brought out on the record in this hearing:

> "Q. At that time did you discuss with him or show him any of your papers which set forth the programming plans of yours for WXXL?
>
> "A. No, I didn't. I had already filed the application."
>
> (Tr. 1714).

Crowder testified that he gave Scarbrough no instructions or information and just left the matter up to him, since Crowder was busy constructing an addition to his bottling plant in Livingston. (Tr. 1715).

64. Crowder set out to get one letter himself, calling Mr. William K. Warren, a principal in a Ford agency in town and the President of the Roane County Chamber of Commerce. Crowder asked Warren to write a letter in his behalf and he asked that the letter be written by Warren as President of the County Chamber of Commerce. (Tr. 1761). When Crowder asked Warren for the letter, there was no discussion of any plans that Crowder may have had for programming the station (Tr. 1767). This request was made on or about October 10, 1961. Warren understood from Crowder that the latter wanted a statement as to Crowder's ability and character and Warren commented on such matters in the letter. (Tr. 1771). Warren left the letter in his office to be picked up by Crowder (or perhaps it was mailed to him, Warren couldn't

recall definitely). (Tr. 1761). A few days later, Crowder brought back to Warren his October 10th letter and told him that it wasn't the type of letter that Crowder wanted. At that time Crowder brought back the text of a second letter. (Tr. 1761-2). The first letter, according to Crowder, "was not emphatic enough, I felt, as I felt he should have written". (Tr. 1655). Accordingly, Crowder had Scarbrough prepare the new letter for Mr. Warren to sign as President of the Chamber of Commerce (Tr. 1660-1), which he brought to Mr. Warren on October 17, 1961.

65. Upon reading the letter prepared for his signature by Scarbrough and brought to him by Crowder, Mr. Warren first declined to sign it, telling Crowder that he felt it might be a controversial matter and he preferred not to get involved. However, Crowder told him that the matter would be confidential and his name would never be revealed, albeit the letter would be filed with the application. Upon that representation, Warren signed the second letter. (Tr. 1764, WHBT Ex. 36-L). Mr. Warren, who was subpoenaed to testify, stated that the first letter, which simply concerned Crowder's business ability, was of his (Warren's) own composition and freely given without reservation (Tr. 1768), but when the Scarbrough-written letter was presented to him by Crowder he had reservations but finally signed it because he felt that as a businessman "living in a small community, a man has to straddle the fence and try to appease everyone. You get yourself involved in things which sometimes you maybe would really not; yet, at the same time, if you can't do the job, why maybe you should step aside. So I signed the letter". (Tr. 1766).

Warren stated that the Scarbrough-prepared letter which he signed, and which Crowder submitted to the Commission under his, Crowder's oath did not reflect his views. It was pointed out, for example, that the suggestion in the letter that the writer was "especially gratified to learn of your [Crowder] desire to make a part of your time available to public information through Chamber activities" might be construed as a statement that the existing station, WHBT, was doing an insufficient job, and in Mr. Warren's view the existing station was doing a sufficient job. (Tr. 1772). The only discussion Crowder had with Warren about programming concerned Warren's comment that the existing station had been cooperative in promoting civic events (Tr. 1772-73).[38]

66. The persons whom Scarbrough was to contact had no relationship to persons or organizations who might participate in a program (Tr. 1715). One of the persons to whom Scarbrough went for a letter was the superintendent of schools. Mr. C. R. Black was subpoenaed and testified at the hearing. He has lived in the Harriman area for some thirty-eight years and was principal of the Harriman High School from 1929 through 1937, and after a year's leave of absence came back to the school system as Superintendent. He served in that capacity until he retired on July 1, 1964. He was the Superintendent of the Harriman city schools in 1961. (Tr. 1736-7). Mr. Black testi-

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[38] These facts were unknown to the Commission at the time of its January 14, 1966 grant without a hearing. At the time WHBT had filed its Petition to Deny, in December of 1962, Mr. Warren was no longer President of the Chamber of Commerce and had removed from Harriman and the question as raised in the Petition to Deny concerned only the lack of official action of the Chamber. (See Zirkle letter).

fied that a few days prior to October 13, 1961, Walter Harold Scarbrough, whom he knew, talked with him and said he, Scarbrough, wanted a new radio station and asked if Black would write a letter on behalf of such an endeavor. Mr. Black testified that he had known Scarbrough a long time and for that reason would be glad to write a letter to help him. (Tr. 1738). A few days later, on October 13, 1961, Scarbrough returned with a letter which Scarbrough had prepared and handed it to Black and asked him to sign it. The letter was all written out, as Mr. Black testified, and although Scarbrough suggested that he might delete any portions Black found objectionable, Black hurriedly handed the formed letter to his secretary and had her copy it and affix his, Black's, signature thereto. (Tr. 1739, WHBT Ex. 36-B).

67. Mr. Black never had any conversations with Crowder with respect to the radio station (Tr. 1739). Mr. Black testified that he was in a hurry on October 13th when Scarbrough presented the formed letter to him and he didn't take time to thoroughly read the letter, but simply passed it on to his secretary and it was copied on Harriman School stationery and she affixed his signature. Mr. Black testified that he disagrees with the tenor of the letter prepared by Scarbrough to the extent that it suggests that the existing station was not doing a sufficient job and to the extent that it suggested that Harriman needed another radio station. (Tr. 1741-3). This letter, prepared by Scarbrough, was submitted by Crowder with his amendment with the intention of representing 'o the Commission that a community programming survey had been accomplished (WHBT Exs. 36-B, 37, Tr. 1521-3).

68. James W. Harmon testified in response to a subpoena. In 1961 he was the Manager of the Princess Theater in Harriman and the President of the Harriman Business Association. (Tr. 1748). In the week prior to October 26, 1961, Mr. Scarbrough asked him to write a letter supporting a proposal by Crowder for a new radio station. Mr. Harmon testified that "Having known Harold [Scarbrough] for several years and liking him as a person and everything, and my nature being in the business I was in, in that I wanted to accommodate people, I told him I would go ahead and write a letter". (Tr. 1750). However, Harmon testified he was busy and put off writing the letter, and Scarbrough came by on several other occasions to ask him for it and finally, on October 17, 1961, he told Scarbrough to go upstairs with him to his office (in the Princess Theater) and he would "jot off a letter". (Tr. 1750). When they got upstairs to the office he found that Scarbrough had two or three pages of suggested material and Scarbrough told him to read them over and to use those he thought were appropriate. After the letter was written, Harmon asked Scarbrough how he wanted the letter signed -- because Harmon was both the theater manager and the President of the Harriman Business Association -- and Scarbrough told him to sign the letter as President of the Business Association, which Harmon did. (Tr. 1750).

69. Crowder never had any discussions about programming with Harmon, but the letter submitted by Crowder as part of his sworn representation to the Commission included the statement, addressed to Crowder, that the write, Harmon, was "particularly interested in the plans you have discussed with me ...."

and contained references to "your proposed program schedule" (WHBT Ex. 36-M). Furthermore, until the matters were developed at the instant hearing, Crowder never changed that representation, and particularly left it standing when he

filed the sworn opposition dated January 3, 1963 (Crowder Opposition to WHBT Petition, Off. Not. and Tr. 235, 1588).

70. Crowder's witness and his agent in securing the letters, Walter H. Scarbrough, testified that with respect to the Harmon letter he tried on three occasions to get a letter and finally, on October 26, 1961, finding that Harmon had still not written one went up to Harmon's office and typed up a letter form on Harmon's typewriter there (Tr. 1365). Harmon denied this, stating that Scarbrough did no typing in his office but rather that Scarbrough had suggested statements which he got Harmon to use in the letter (Tr. 1755-6).

71. Scarbrough played no part in the preparation of the programming material in the application. He had neither worked with Crowder in the preparation thereof (Tr. 1421-2), nor had Crowder shown him the proposal (Tr. 1523, 1714). As above found, Scarbrough obtained the Harmon and Black letters and prepared the Warren letter which was submitted by Crowder to the Commission. Scarbrough obtained all the other letters filed by Crowder, except possibly that from the Mayor. (Tr. 1561-4). The out-of-town letters he obtained by writing a letter and asking that the recipient send a letter back to Crowder. Scarbrough claimed he couldn't recall whether he signed the requesting letter "F. L. Crowder" or signed his own name but in any event asked the addressee to

send the return letter addressed to F. L. Crowder at an address in Harriman. (Tr. 1408-9, 1425-6).

72. The letters obtained by Scarbrough were sent by him to Crowder in Livingston and Crowder acknowledge receiving them from Scarbrough rather than from the letter-writers (Tr. 344, 1575). Although Crowder conceded that he knew how the letters reached him, no explanation was offered as to why he let remain standing unchallenged the statement in the January 1963 "explanation" that the final letters were all mailed directly by the writers to Crowder and not even seen by Scarbrough (WHBT Ex. 35 for identification; Tr. 1568-70, 1571).[39/]

73. After Crowder obtained the so-called programming survey letters, he did not attempt to adjust or amend his program proposal in any way to reflect any information he may have obtained as a result of the survey (Tr. 1716). Although the letters were submitted to the Commission by way of a sworn amendment for the specific purpose of representing that a community survey had been made (supra), Crowder concluded his many versions of the transactions with a claim that his attorney's letter anent the survey didn't indicate that the Commission was interested in the matter (Tr. 1714) — but he couldn't produce the letter (Tr. 1722).

[39/] The earlier explanation set out in Scarbrough's statement which was reviewed and sworn to by Crowder (Tr. 1570) is in the Commission's files and may be officially noticed. WHBT moved that it be admitted into evidence in this hearing, as WHBT Ex. 35, but the Examiner declined to admit it, missing the point that it was being offered as an earlier representation by Crowder in view of the affidavit's direct reference to his participation and Crowder's adoption thereof under oath. (See Tr. 1784-6). An exception to that ruling is preserved.

F. Indications of Trafficking in WXXL Operations.

74. Since outward manifestations can be utilized in assaying intention, evidence concerning Crowder's operation of station WXXL since August 11, 1966 was adduced and considered on the record. Whether Crowder applied for WXXL in furtherance of a bona fide intention to provide programming to meet a community need or whether the application was an implementation of his earlier statements that the way to make money in the radio business was not by operation but by building up the size of revenues and then selling for a profit, can be considered against the following findings.

75. Crowder's application for the new station in Harriman contained an exhibit representing specific programs to be carried (Tr. 301). The proposal was never amended, and it constituted Crowder's representation to the Commission as to his reasons for desiring a station, namely, to provide such programs (Tr. 304-304b). In the proposed program schedule, Crowder stated that he would carry a five minute Harriman School News program five days a week. The program was classified as educational, local, sustaining. The program has not been carried at all, on any day of the week. (Tr. 307). There was a representation that a 30-minute live, discussion, sustaining program, broadcasting the activities of the Harriman City Council, would be carried every Saturday. This program has never been carried since the station went on the air (Tr. 316).

76. The original program schedule specified a 30-minute Saturday afternoon live, sustaining program entitled "Student of the Week", but that

program isn't being carried (Tr. 316-7). The original program schedule listed a 15-minute local, agricultural, sustaining program for Saturday afternoon entitled "County Agent". That program has never been carried, neither on a Saturday nor any other day since WXXL has been in operation (Tr. 316). The proposed schedule included a 15-minute farm report, classified as local, agricultural, to be broadcast five days a week, and Crowder didn't know whether it was being carried (Tr. 304b-304c) nor could he show that it was carried. (See Tr. 319-22). The original schedule proposed a local "Sports Today" program for 15 minutes on Saturdays, and after first equivocating, Crowder conceded that no such program was carried on Saturday or any other day of the week and the only sports news that may be on the station is taken from the news wire (Tr. 317-8).

77. The program schedule which Crowder represented to the Commission would be implemented, and concerning which he filed the hereinabove-discussed affidavit of a community survey, stated that a half hour local, live, sustaining, discussion program would be carried every Sunday afternoon entitled "Our Civic Clubs". Such a program has never been carried on WXXL since the station commenced operating last August (Tr. 318). The original program schedule also listed a live, sustaining 30-minute educational program on Sundays called "Harriman High School Today". Such a program has not been carried although there may have been one or two tape recordings of the high school band which were broadcast. With respect to this program, Crowder claimed "We checked

and they weren't interested" (Tr. 318).[40/] Crowder's program proposal stated that a 30-minute live, sustaining discussion program entitled "Youth Speaks" would be presented on Thursday afternoons, but such a program has not been carried on WXXL (Tr. 319, 321).

78. Crowder was given the opportunity to show that substitute programs for the omitted ones were being carried (Tr. 319-20), but no showing was made by him on this record as to such substitute. As the Examiner pointed out, absent that showing neither any specific program in the original schedule nor any related substitute could be deemed to have been carried (Tr. 319-20, 322).

79. Crowder's commercial practices also give indications that he applied for and is utilizing WXXL consistently with his earlier-expressed philosophy, i.e., to build up the advertising revenues in any way possible and then when the list of advertisers on the station makes it attractive to

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[40/] These findings might be read with the findings concerning the representation, or rather the misrepresentation, practiced by Crowder in connection with the submission of the Chamber of Commerce and Harriman School System letters, supra.

a purchaser, sell the station for a profit. WHBT introduced into evidence a copy of WXXL's rate card (Tr. 284-5, WHBT Ex. 5). Crowder was shown the rate card and at first claimed that they were the rates utilized by him to sell advertising on the station since it went on the air in August. However, upon further questioning he conceded that he sold advertising for less than the rate card rates (Tr. 285). He attempted to justify the less-than-rate card-sales on the ground that he was "meeting his competition", but that explanation didn't hold up because, for example, where he was selling a 30-second commercial spot announcement for $1.25 a spot the "competition's", i.e., WHBT's, rate of $1.25 would apply only on a frequency discount basis, as Crowder himself well knew since he had a copy of WHBT's rate card. (See e.g., Crowder Ex. 25).

80. Crowder then asserted that the advertisers buying at less than rate card rates were getting only 20-second spots, which didn't appear on the rate card, but again upon additional examination finally conceded that the less-than-rate card deals were not limited to 20-second spot buyers (Tr. 331). Crowder then tried another explanation, claiming "We have a special deal for non-advertisers who don't believe in radio advertising, trying to get them into radio advertising", as a reason for selling time at less than his own rate card rates (Tr. 331). However, the "non-advertiser" included those presently and previously advertising on WHBT, so Crowder changed his explanation and said that he meant "non-advertiser" only with respect to WXXL (Tr. 1692). When questioned about rates for commercial religious programs, Crowder asserted they were sold at the rates shown on his rate card (Tr. 334). However, when examined with respect to specific programs and rates, it developed that although the rate card specifies, for example, a $19.20 rate for a 30-minute program, that rate would, according to the rate card, be applicable only on a 52 week frequency commitment, and Crowder conceded that there is no commitment nor any contract

underlying his time sales (Tr. 335). At first he claimed that there may be an oral understanding with respect to some time sales, but again upon further questioning conceded that not even an oral understanding underlay the specific rates at which time was sold to any advertiser (Tr. 336). He apparently sells at any rate at which an advertiser will buy. For example, the record shows that on a non-contract basis, one-minute spot announcements are sold at $1.65, each, to one advertiser, while $2.00 is charged another advertiser, and still a different rate, such as $1.25, is used for other advertisers (Tr. 1692-3).

81. Crowder claimed that he doesn't try to "pressure" advertisers, and in connection with a specific advertising time sold to the Arnold Insurance Agency, he was asked whether he hadn't told a former employee, Mrs. Anna Sue Birchfield, to tell Arnold that he should buy time because Arnold was getting insurance business from Crowder. Crowder denied, under oath, such instructions or suggestions (Tr. 347), but this denial was exploded by Mrs. Birchfield's testimony. Anna Sue Birchfield was employed at Crowder's station for a five-week period during the latter part of September and early October, 1966. She was employed to sell time and advertising spots on the station (Tr. 874-6). As part of her duties, she had an occasion to contact Mr. Arnold of the Arnold Insurance Agency, and wasn't able to sell him time. On one occasion, after a lack of success, she returned to WXXL where both Crowder and Scarbrough were present, and she told them that she felt Mr. Arnold was trying to avoid her. Mrs. Birchfield testified that "Mr. Crowder told me that when I did see him [Arnold] to remind him that we had a large amount of insurance that we were carrying with him and to remind him it was coming up for renewal." (Tr. 881). She went back to see Arnold, and reported what Crowder had said, and got an advertising order from Mr. Arnold (Tr. 882-3).

82. On another occasion, Mr. Crowder told Mrs. Birchfield, in connection with an attempt to sell advertising time to the Orkin Service, to tell the manager that Orkin got business from Crowder, namely spraying his bottling plant in Livingston (Tr. 884-5). Crowder's attorney agreed, on the record, that Mrs. Birchfield's testimony with respect to this matter was correct. "We won't cross-examine on it. If that be considered an admission against interest, I am afraid that must be, because the witness is right". (Tr. 895).

* * *

ORDER

Adopted June 21, 1967; Released June 26, 1967

By the Commission: Commissioners Cox and Wadsworth absent.

1. The Commission has before it the record in the above-captioned proceeding together with the proposed findings and conclusions of the parties. Among the issues designated for hearing is one seeking to determine whether or not Crowder has trafficked in broadcast licenses. Upon consideration of the record, it is our view that the disposition of this issue would be facilitated by an initial decision from the hearing examiner. Accordingly, we are directing the examiner to prepare an initial decision setting forth findings and conclusions with respect to Issue 1, the trafficking question.

2. We adhere to the view expressed in our earlier orders that this proceeding should be expedited. Therefore, we anticipate that the examiner will issue his initial decision promptly. The parties will be given ten calendar days from the date the initial decision is released to file exceptions thereto. Oral argument, at which the parties may direct themselves to all of the issues in the case, will be as soon as possible after the filing of exceptions, possibly two to five days after the filing of such exceptions. The exact date for the oral argument will be specified in a subsequent order.

3. ACCORDINGLY, IT IS ORDERED, That the record in the above-captioned proceeding is remanded to the hearing examiner so that he may prepare an initial decision solely with respect to Issue 1, that the parties within ten calendar days after the release thereof submit their exceptions, if any, and that oral argument will be heard promptly thereafter at a time to be specified in a subsequent order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

INITIAL DECISION OF HEARING EXAMINER
HERBERT SHARFMAN

Issued June 30, 1967; Released July 3, 1967

Findings of Fact

1. The Commission, as mentioned below, has directed the Hearing Examiner to issue this Initial Decision, limited to the trafficking issue "promptly." There will therefore be no full statement of history and procedural steps. It is expected that these will be supplied in the Commission's Decision of this now bifurcated case. It need only be noted here that after the Court of Appeals remanded the proceeding for hearing on Folkways' petition to deny (*Folkways Broadcasting Company, Inc. v. FCC*, January 5, 1967, 8 RR 2d 2089), the Commission designated WXXL's application for expedited hearing on two main issues, 1) trafficking, and 2) *Carroll* (FCC 67-283, released March 3, 1967). Hearings began on May 8, 1967, and continued for all or part of 11 days until May 22, 1967, when the record was closed. Under the designation Memorandum Opinion and Order the Hearing Examiner was to have written an Initial Decision on the whole case, which was to be subject to ordinary, although accelerated, review.

2. But by Order released May 16, 1967 (FCC 67-550), the Commission, taking into account the Opinion of the Court of Appeals, decided April 26, 1967, in which the Court held improper the Commission's grant of temporary authority to WXXL; and finding "that due and timely execution of our functions imperatively and unavoidably require that,

[1084]

immediately upon its closing, the Examiner certify the record to the Commission for a final decision," ordered:

> "That upon the closing of the record it be certified immediately to the Commission for final decision and that the parties hereto shall file their proposed findings of fact and conclusions of law not later than 15 days after the closing of the record."

3. Immediately upon closing the record on May 22, the Hearing Examiner certified it to the Commission. The parties, pursuant to extension, filed proposed findings of fact and conclusions on June 12, 1967.

4. On June 21, 1967, however, the Commission adopted an Order (FCC 67-746, released June 26, 1967) saying in part:

> "1 . . . Among the issues designated for hearing is one seeking to determine whether or not Crowder has trafficked in broadcast licenses. Upon consideration of the record, it is our view that the disposition of this issue would be facilitated by an initial decision from the hearing examiner. Accordingly, we are directing the examiner to prepare an initial decision setting forth findings and conclusions with respect to Issue 1, the trafficking question.
>
> "2. We adhere to the view expressed in our earlier orders that this proceeding will be expedited. Therefore, we anticipate that the examiner should issue his initial decision promptly. . .
>
> "3. ACCORDINGLY, IT IS ORDERED, That the record in the above-captioned proceeding is remanded to the hearing examiner so that he may prepare an initial decision solely with respect to Issue 1 . . ."

Acquisition and Sale of WHBT, WDEH, and WLIV

5. *Acquisition of WHBT.* A group of Harriman businessmen formed a corporation and obtained a construction permit for an AM station in Harriman in 1946. Licensed to Harriman Broadcasting Company, Inc., it went on the air as WHBT in 1947, on 1230 kc,

with 250 watts power. Crowder, a Harriman resident, acquired a minority stock interest (8 of 48 shares) in the corporation.

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6. On April 24, 1950, an application for transfer of control (BTC-935) of WHBT was filed. It disclosed that Crowder had bought out the entire ownership interest of the licensee's other stockholders for $20,000. The total value of the corporation's stock, including Crowder's eight shares, was given as $24,000. Crowder listed this stock – owned and to be acquired – as his principal asset. After acquisition, Crowder showed that his total assets would be $77,190, and liabilities $22,708.33, for a net worth of $54,481.67. Replacement cost of the licensee's physical assets was listed at $22,120.14. The Commission consented to the transfer of control to Crowder on July 21, 1950. It became effective on August 16, 1950. Crowder was General Manager of WHBT and active in its day-to-day operation. From the time he became 100% owner his commercial manager was his friend Walter H. Scarbrough, with whom he worked "pretty closely" (Tr. 1385). Scarbrough was in military service in 1951, but returned to the station in 1952 and continued his close association with Crowder until the station was sold in 1956 (see below).

7. WHBT filed its renewal of license application (BR-1664) on October 31, 1951, listing total station assets at $29,404.17. In 1954, Crowder made certain improvements at a cost of $2046.81.

8. In 1953, Crowder's 100%-owned corporation secured a permit for an FM station in Harriman. Some time after September 1953, the station went on the air, but it ended operations because of "a fire at the transmitter building [which] messed up the FM transmitter" (Tr. 323). On December 7, 1954, through his attorney, Crowder surrendered the FM permit. (In September 1966, Crowder filed a new application for a Harriman FM station.)

9. Also on December 7, 1954, an application (FCC Form 316) was filed for assignment of the WHBT license (BAL-1919) and the WDEH construction permit (for findings on the WDEH construction and acquisition, see below) from Harriman Broadcasting Company, Inc. to F. L. Crowder, tr/as The Harriman Broadcasting Co., an individual. The Commission consented to both the WHBT and WDEH assignments on December 14, 1954. They were consummated on December 31, 1954. Harriman Broadcasting Company, Inc. was dissolved.

10. A second application for renewal of WHBT's license was filed on April 27, 1955. Crowder's associated balance sheet showed total assets of $154,229.01, with station equipment for WHBT listed at $42,086.01, and for WDEH at $17,150. Liabilities included notes payable to Gates Radio Co. ($11,423) and the First National Bank, Harriman ($14,540). Crowder's balance sheet net worth was $103,532.44.

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11. *Construction and acquisition by Crowder of WDEH.* Harriman Broadcasting Company, Inc., of which Crowder was sole owner, applied for a construction permit for a new AM station at Sweetwater, Tennessee, 27 miles from Harriman, on 800 kc, 500 watts, daytime. Total construction costs were estimated at $17,816. The Commission granted the application on September 15, 1954. As noted in Par. 9, above, the Commission consented to the assignment of the WDEH permit (BAP-253) from Crowder's corporation to himself as an in-individual, the assignment, like WHBT's, being consummated on December 31, 1954.

12. Application for the WDEH license (BL-5625) was filed on February 1, 1955. It listed total construction costs of $17,150. The Commission authorized WDEH to begin program tests on February

4, 1955, and granted the license application on February 17, 1955. Crowder filed an application for renewal of license (BR-3075) on April 27, 1955. Attached was a balance sheet, valuing WDEH at $17,150. The Commission granted the WDEH license renewal on July 20, 1955.

13. *Sale of WHBT and WDEH.* On June 22, 1955, Crowder engaged Blackburn-Hamilton (now Blackburn and Company, Inc.), media brokers, to sell WHBT and WDEH. (Folkways apparently would make something of the fact that although Crowder has testified that he did not remember when he first decided to sell WHBT and WDEH, it was developed, through the testimony and documents of Jack C. Harvey, a Blackburn associate, "that within four months after WDEH commenced operation, and possibly earlier, Crowder had been in touch with the media broker with respect to the sale of both WDEH and WHBT" – Par. 20, proposed findings. Since it is undenied that the listing agreements were dated June 22, 1955, any short additional time during which approaches must have been made to Blackburn-Hamilton is immaterial.) Crowder told Blackburn-Hamilton that he would only sell the stations for cash.

14. Blackburn-Hamilton brought at least two prospective station buyers to Harriman. One of them – for WDEH – was Mr. Thompson, a principal in Marto Broadcasting Company, Inc. Crowder executed a contract for the sale of WDEH to Marto on January 18, 1956. On February 14, 1956, an application was filed for the assignment of WDEH to Marto for $52,500 (BAL-2240). Following receipt of a McFarland letter, the application was withdrawn on July 25, 1956. In response to an inquiry in the application form for a "full statement of assignor's reasons or purposes for requesting this assignment," Crowder had said only:

> "Assignor desires to withdraw from the broadcasting business at Sweetwater at this time and believes assignee will bring broadcast service to the Sweetwater community that will be in the public interest."

15. On July 30, 1956, a new application for assignment of the WDEH license to WDEH, Inc. (BAL-2399) was filed. It was based on a contract of sale to WDEH, Inc. dated July 24, 1956. As in the Marto contract, the price was $52,500; terms were $10,000 down, and 12 monthly installments of $500, with further installments of $600 a month until the balance was paid. Crowder sold to WDEH, Inc. the station equipment, certain real estate, and specific operational contracts. The "original cost" of these assets was listed at $31,147.50, and their present value at $29,985.10. Crowder's reason for the sale in his part of the assignment application was worded almost identically to the answer in the Marto application, quoted above. Responding to the question of Broadcast Bureau counsel whether "it could clearly be stated now that at the time the [the assignment applications] were filed they represented what you felt or believed to be the reasons for sale of the stations" (WDEH and WHBT), Crowder testified: "As I recall, my reasons were that I wanted to get out of the radio broadcasting business" (Tr. 348). (As part of the

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assignee's application, A. D. Smith, Jr., principal of WDEH, Inc., included this statement, which is here quoted merely to show it was made and not for its truth – see below, Par. 38:

> "Mr. Crowder had an unfortunate experience during last year with two different managers – they were not completely honest in their business dealings, with the local people or Mr. Crowder. This had a very bad effect financially on WDEH.

> "The first of this year, Mr. Crowder was fortunate in securing a new manager who has shown a very steady increase in business every month.")

16. Before the Commission had consented to the assignment to WDEH, Inc., Crowder filed an application to increase WDEH's power from 500 watts to 1 kw. The Commission granted the license assignment application on August 29, 1956. The actual assignment to WDEH, Inc. was made on September 5, 1956.

17. It has already been noted that Crowder had listed WHBT for sale at the same time he put WDEH on the market. After Crowder executed the first and abortive contract for the sale of WDEH to Marto in January 1956, he contracted, on April 13, 1956, to sell WHBT to Folkways Broadcasting Co., Inc. At that time Folkways' stockholders were Ernest Tubbs, Hank Snow, and William McDaniel. The sale price was $80,000, with $10,000 down, the balance in 83 installments of $835 and a final installment of $695, for fixed assets and land. Crowder reported the original cost of WHBT station equipment to have been $53,102.70, and that its present value was $18,649.52. Crowder retained Cash and Accounts Receivable, though he agreed to transfer all property free of lien or debt. For the $70,000 balance Crowder took Folkways' purchase money note in that amount, secured by a deed of trust on station real and a chattel mortgage on its personal property. The Commission granted the application for the assignment to Folkways (BAL-2321) on June 13, 1956. The assignment was effected on July 1, 1956; and on that date Folkways began to operate the station.

18. Complying with the application form's direction to state the reasons for the WHBT assignment, Crowder here, too, said merely:

> "Assignor desires to withdraw from the broadcasting business in Harriman at this time and believes assignee will bring a broadcast service to the Harriman community that will be in the public interest."

While the Folkways assignment application was pending, however, the Commission sent Crowder a letter, dated May 18, 1956, reading in part:

> "Your attention is directed to Section 310 of the Communications Act of 1934, as amended, which precludes the grant of an application for assignment of a broadcast facility except on finding by the Commission that the public interest, convenience and necessity will be served thereby. The reasons given for the assignment are among the several determinative factors the Commission finds essential to consider before it can justifiably reach such a finding required by the Act. You are, therefore, requested to elaborate more fully on the reasons of the assignee [sic] for requesting this assignment."

Folkways' explanation of the use of "assignee" instead of the obvious "assignor" is accepted: "The word 'assignee' is probably a typographical error, since the letter was addressed to Crowder and it requested *him* [emphasis Hearing Examiner's] to elaborate more fully [this repetition of the pleonasm the Hearing Examiner does *not* accept] on the reasons for requesting the assignment" (Par. 30, Fn. 18, proposed findings). Crowder could not recall having replied to the letter, and he offered no proof of a reply. It must be found that the Commission's inquiry of May 18, 1956, went unanswered.

19. While Crowder was trying to sell WHBT and WDEH, and before the execution of the contracts which resulted in their sale, Crowder and his brother-in-law, the late Reuben H. McCoin, formed a partnership "to apply for, construct, and operate a standard broadcast station at Livingston, Tennessee." McCoin had sold his car dealership in 1955 and wanted to get into broadcasting. Knowing nothing of the business, he asked Crowder to help him; Crowder, who testi-

fied that he had told McCoin that rather than taking on new commitments he was trying to get out of radio, agreed to go into partnership with McCoin "under one condition, that I would put the station on the air, so to speak, and after that I was through because – or in an advisory capacity in case he needed advice" (Tr. 1485). Crowder acknowledged that he had not disclosed the limitations of his participation to the Commissioner. In the application that he and McCoin filed for Livingston (see next paragraph), in fact he said that he would be "General Manager" of the proposed station; he recognized that this was a representation to the Commission that he would be General Manager "when the station became operative" and that his tenure would not be limited to the period of construction. He testified: ". . . I made an error. I should have notified" (Tr. 1718) the Commission. The error was repeated in the Livingston station renewal applications filed May 6, 1958, and May 2, 1961. Although the term

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"General Manager" was not deleted until the April 28, 1964, Livingston renewal application, after Crowder, as will appear below, had left the partnership and McCoin had become sole owner (it was also the first renewal application filed after the petition to deny of December 1962), in the application for assignment to McCoin, filed on April 14, 1964, it was recited that McCoin had been actively in charge. There is no evidence that Crowder was active in the operation of the Livingston station after the shakedown period; and it is found that his participation was limited as described in this paragraph and Par. 29 below.

20. The application for a construction permit for the Livingston station (WLIV), 920 kc, 1 kw, daytime, by Crowder and Mc Coin, equal partners, doing business as Audio Broadcasters, was filed in January 1956 (BP-10326). Anticipated costs of construc-

tion were $11,875, to be financed through "New Capital" of $15,000. The partnership agreement called for each partner to contribute $7500. The Commission granted BP-10326 on May 3, 1956. In a modification application (BMP-7341) filed on August 20, 1956, there was no change in construction costs. The station was built by November 16, 1956, when an application for license for WLIV (BL-6402) to cover construction permit (BP-10326) and the modification (BMP-7341) was filed. In BL-6402 construction costs were listed at $12,423.90.

21. Though it may seem intrusive, it will be convenient at this point to make findings on Crowder's residences and domicile. Crowder testified that he has lived in Harriman for 32 years (at first he said 35, but corrected it to 32; the confusion arises from the fact that he has "been a legal resident of Harriman since *1935*" (Tr. 1488)) and that it is his home. The Hearing Examiner sees no reason to doubt this testimony from the man most qualified to make it, and he rejects the dissimilar estimate of Walter H. Scarbrough (though without reflection upon Scarbrough's general credibility) whom Folkways (Par. 13, proposed findings) poses as the indisputable expert on the subject in these words: "Although Crowder's own witness and former associate Walter H. Scarbrough testified that Crowder did not arrive in Harriman until the 1940s (Tr. 1361), Crowder contended that he had resided there for 35 [sic] years (Tr. 266)." In a big city one may be as anonymous as an unnumbered Swiss bank account, but in a small town like Harriman one's presence is known. Apart from Scarbrough's recollection, however – which, it has been held, cannot prevail against Crowder's assertion– there was no testimony to counter Crowder's.

22. In December 1956, Crowder and his wife (whom he told of the purchase after he made it) bought several lots and a residence in Livingston, which is 60 air and 75 road miles from Harriman.

Crowder added a garage to the house. He wanted a place in Livingston so that he would be near his bottling plant (see below) and not because WLIV

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was there. In 1957, and for some years afterwards, Crowder spent Tuesday through Thursday night at the Livingston property, and the rest of the time in Harriman. After Crowder sold this Livingston residence (see paragraph 24) he maintained an apartment over his bottling plant. He would then stay at the apartment from Monday through Thursday night, and in Harriman on Friday through Sunday night, returning to Livingston on Monday. Since 1946 he has lived at 565 Margrave Street, Harriman, with his wife and family, but he still has his apartment over the bottling plant in Livingston.

23. Crowder had been the sole owner of the 7-Up Bottling Plant in Livingston since September 1956. He bought it while WLIV was being constructed. The business has grown and prospered under his supervision (he has a plant manager). Crowder's soft-drink (7-Up and others) franchise is for 15 counties in Tennessee and Kentucky. He values the building and plant equipment of the bottling business at $239,599.13.

24. Crowder had bought and improved the Livingston house in expectation of making it his family home, but his wife (whom, as indicated above, he had not initially consulted about his plan), some months later decided that she would rather stay in Harriman. Crowder then put up the Livingston house for sale. Until it was sold three years afterwards, Crowder (see above) used the house while he was in Livingston. In admiration of counsel's temerity, the Hearing Examiner quotes from Folkways' proposed findings (Par. 13): "Crowder's wife was present at the hearing (Tr. 276), but she

did not testify to substantiate his claim of her change of mind." On this point it need only be said 1) that Crowder would not have lightly testified in his wife's presence to her vacillating tendency; 2) that there was no reason for Crowder to corroborate something *en famille*; and 3) that if Folkways' counsel was so confident that Mrs. Crowder would contradict her husband, he himself could easily have called her as his witness.

25. The discussion returns to WLIV. The Crowder-McCoin partnership's *pro forma* balance sheet accompanying BL-6402, as at November 14, 1956, showed cash in bank, $2576.10; broadcast equipment, $12,423.90; and liabilities consisting of the respective $7500 capital contributions of the partners. The Commission licensed WLIV on November 26, 1956, pursuant to an application filed on November 16, 1956, when the Commission granted program test authorization.

26. WLIV's license renewal application was filed on May 5, 1958. As already noted, Crowder was again listed as General Manager; McCoin

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was "Station Manager." The partnership's balance sheet as at January 1, 1958, showed cash, $7281.85; broadcast equipment, $17,763.90; furniture and fixtures, $3321.79; and accounts receivable, $9781.25, for a total of $38,148.79. Liabilities were $5894.29. Net worth (apparently too high by $1000, as the Broadcast Bureau points out in its proposed finding Par. 103, fn. 1) was given as $33,254.50. The license was renewed on July 2, 1958.

27. The 1961 WLIV license renewal application was filed on May 2. Again, as previously written, Crowder was listed as General Manager; and, again, McCoin as Station Manager. The balance sheet as at January 1, 1961, showed cash, $1387.62; broadcast equipment,

$16,298; furniture and fixtures, $3496.23; and accounts receivable, $16,455.30, for a total of $37,638.05. Accounts payable were $1051.77, and net worth $36,585.28. The license was renewed on July 31, 1961.

28. Folkways' Par. 39, proposed findings, is cast in such form as to imply that Crowder was lying when he testified that he had not considered selling WLIV within a year or two after it began operation. Crowder, however, was drawing from $5000 to $6000 a year from the partnership for doing little, and there is no reasonable basis for questioning, nor any evidence contradicting, his testimony that the two conversations he had had with media brokers had not been initiated by him and that the sale of his own, as distinguished from his brother-in-law's, interest was not a topic.

29. Folkways also questions Crowder's testimony that while at Livingston he was busy at the bottling plant and seldom ever visited the station. He testified that in the first year of operation he visited it "maybe once a week" and afterwards an average of once a month; sometimes, he said, he "wouldn't be around the place for three or four months in the busy summer at the bottling plant particularly" (Tr. 1486). Folkways' writes (Par. 39, proposed findings) 1) that Crowder's corroborating witness, Robert W. Gallaher, a WLIV salesman, was in and out of the station all day, that McCoin had a private office at the station, and that "Gallaher conceded that he had no way of knowing whether or when Crowder may have been there with McCoin"; and 2) that Gallaher testified that "based on his friendship" he would like to help Crowder (Tr. 1319). It should be remarked, however, that it was in *McCoin's* private office that Folkways imagines that Crowder was ensconced; and that there is no evidence that Crowder, though nominally General Manager, had a private or any other office at the station. Secondly, one cannot fall in with Folkways' facile dramatization of Gallaher's acknowledgment of

friendship with Crowder; it does not serve effectively to impeach his testimony.

30. For at least two years before Crowder complied, McCoin had been urging Crowder to sell his interest in WLIV to him. Crowder testified (Tr. 1490):

> "He [McCoin] made an offer of $50,000 to buy or sell. I sold. That is just how simple it was. I didn't want to be the owner of two stations, because I was hoping to build one in Harriman, which I did. I went through it once and I don't like to have this type of ownership.
>
> "Q. You are referring to the only time in your broadcast history when you owned WDEH and WHBT simultaneously?
>
> "A. That is correct."

McCoin's attorney drafted the agreement by which Crowder sold his 50% interest in WLIV to McCoin for $50,000. At Crowder's insistence, McCoin personally lined out a phrase in the agreement, embodied in a covenant not to compete – ". . . and for further consideration and in order to induce . . . R. H. McCoin to purchase my interest in the above referred to enterprise." Crowder demanded that the phrase be removed because he "didn't want to sell in the first place" (Tr. 1481), and he felt that it was an erroneous construction of his position *vis-a-vis* McCoin.

31. On April 14, 1964, an application to assign the WLIV license to McCoin was filed. It reflected Crowder's withdrawal from the partnership. It has been written above (Par. 19) that in this application McCoin and Crowder said that McCoin had been the active manager in charge of the day-to-day operations of WLIV. (This, of course, was also after Folkways' and others' December 1962 peti-

tions to deny Crowder's present Harriman application.) The agreement of sale called for transfer of the license and of the physical assets and other station property, but it specifically excluded undistributed profits (cash and accounts receivable) credited to Crowder's capital account on the partnership books as of "Closing Date," and prepaid items which were to be prorated as of that date.

32. No partnership balance sheet was filed with the assignment application (BAL-5077). But while it was pending, the WLIV license renewal application (BR-3365) was filed on April 28, 1964, to which a balance sheet as at April 1, 1964, was attached. It showed cash, $8682.25; equipment, $16,298.90, entirely depreciated, leaving a zero balance; furniture and fixtures, $4513; and accounts receivable,

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$20,113.95, for a total of $33,309.20. Liabilities shown were accounts payable, $671.65, and a net worth of $32,637.55. The Commission granted the assignment on May 11, 1964. (McCoin, on June 9, 1965, filed an application to assign the WLIV license to WLIV, Inc. for $130,000.)

33. *Crowder's gain from WHBT, WDEH, and WLIV sales.* In the WHBT sale, where the price was $80,000 and the "present value" of equipment $18,649.52, Crowder's gain was $61,350.48. In the WDEH transaction Crowder realized a gain of $22,504.90 ($52,500 sales price less a "present value" of $29,995.10). When Crowder sold his interest in WLIV the physical assets had been fully depreciated. He had therefore recovered his entire partnership investment of $7500, and as his basis of calculating gain was zero, the $50,000 he received from McCoin was all gain.

34. Also, as mentioned above (Par. 28) Crowder drew from $5000 to $6000 a year from WLIV. Assuming an operation of

seven years from January 1, 1957 to January 1, 1964, he would have withdrawn partnership profits (not as compensation but as return on investment) of at least $35,000. His contract right to one-half of the accounts receivable at dissolution of the WLIV partnership would have brought him an additional $10,000.

35. The latest net worth figure shown for Crowder (in his balance sheet of June 30, 1966, attached to his new Harriman FM application) is $298,026.46. In 1950, when he acquired a 100% stock interest in the licensee of WHBT, his net worth was $54,481.67. Of the difference between these two figures – $243,544.79 – about $190,000 is attributable to gains and profits from the sale and investment in radio properties. The Broadcast Bureau's proposal (Par. 111, proposed findings) is valid and is here adopted (disregarding the niceties of accounting nomenclature):

> "Thus, as an ultimate finding, the Bureau proposes that Crowder, as a fact, profited in each sale, and that this profit has been of substantial magnitude in his overall capital growth picture."

(Folkways suggests (Par. 24, proposed findings) additional Crowder gains through writeups and intra-party transactions, but it is believed that pursuit of the matter would not significantly supplement the findings in this section).

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Motive and Intent

36. "Licenses," said the Court of Appeals, "cannot be granted in the public interest to those who seek them for sale rather than service." In the prior section the incompletely fleshed facts of Crowder's purchase, construction, and sale of broadcast facilities and interests have been set out. Although obviously necessary for a consideration of trafficking, by themselves they would not permit a deci-

sion on Issue 1. Crowder does not – and, of course, he could not – deny that he made money from the sales. His counsel writes (Par. 80, proposed conclusions): "The fact that Crowder made a profit from the sale of his broadcast interests has no significance in the factual context surrounding each such disposal." But he points out (Par. 77, proposed conclusions), that "Crowder has denied having any intention at any time to traffick [sic] in licenses." The Broadcast Bureau writes (Par. 24, proposed conclusions): "In these three transactions, Crowder realized profits of some magnitude. But, standing alone, the conclusion cannot be drawn that Crowder trafficked in broadcast authorizations, for from them the necessary element of intent cannot be demonstrated or even inferred." Whether Crowder was aggrandizing his broadcast interests for the primary purpose of selling them at a profit, or whether in the course of serving the public he incidentally enhanced their value and then on sale realized a profit, is the present topic. The Broadcast Bureau would resolve the question principally on the disputed testimony of Harry T. Burn (see below). Folkways would decide it on a broader sweep. The discussion below will take into account Folkways' range of assertions, including alleged misrepresentations, but it should be understood that the treatment of a particular subject is not necessarily a preliminary approval of its pertinence.

37. In connection with the 1956 sales Crowder told the Commission simply that he wanted to withdraw from Broadcasting in Harriman and Sweetwater. Folkways filed its petition to deny the present Harriman application on December 10, 1962, among other things accusing Crowder of trafficking. Crowder then filed a sworn opposition. In part he said:

> "The true facts [on the sales of WHBT and WDEH], which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his station interests due to ill health" (see Tr. 1600).

Crowder also declared in this affidavit that on a doctor's advice he had "retired completely from active participation in the Broadcast industry" in 1956 (Tr. 1601). The apparent inconsistency between Crowder's representation that he was forced to sell the stations because of ill health and that he had withdrawn from "active participation" in broadcasting, on the one hand, and his 50% partnership interest in WLIV and representation in that application, filed the same year, that he would be General

Manager, on the other, was raised in Folkways' reply, filed on January 20, 1963. No formal action was taken on the Harriman application (File No. BP-15122) until December 17, 1965, when the Commission addressed a letter to Crowder:

> "In your opposition, you state, *inter alia*, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were party to an application for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50 percent partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this matter. . ." (Tr. 1602)

38. Crowder responded to the Commission's letter with a statement on December 27, 1965. He said:

> "In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation

> thereof, and for that reason both stations were sold in that year. . . That same year, his brother-in-law, Mr. R. H. McCoin was unemployed and wished to become engaged in broadcasting. . ."

Crowder went on to explain that although the 1956 WLIV application represented that he would be General Manager, that was not really his intention, and that he had only agreed to help McCoin get his station on the air. He testified, as stated in the previous section, that this was his arrangement with McCoin; he realized, however, that in making the unconditional statement about his proposed participation in WLIV he had "made an error. I should have notified" the Commission (Tr. 1718).

39. When asked on cross-examination by Broadcast Bureau counsel whether he had "consulted with" a doctor about what he had previously testified was the "nervous condition" caused particularly by troubles at WDEH (see below), Crowder testified that he had, and continued (Tr. 1701):

> "I told him [the doctor] my trouble. He said, 'Well, the only thing I can tell you is get out of the radio business if that is what is causing you to be so nervous.'
>
> "Q. As a result you took the steps you took?
>
> "A. Correct."

Counsel for Folkways argues (Par. 47, proposed findings), that "Even then he [Crowder] did not identify the doctor, the place, time or occasion of the conversation [which counsel for Crowder conceded might have been during a casual conversation and not in a formal consultation (Tr. 1687)] and he limited his testimony of the so-called [sic] medical doctor's requirement to" the advice to which Crowder had testified, quoted above. Despite his attitude of consistent skepticism toward Crowder's testimony (even (see Par. 20, above) to that about the extent of his residence in Harriman), however, counsel for Folkways made no attempt, by questioning Crowder on further cross-examination, to "identify the doctor, the place, time or occasion of the conversation." (It might also be noted that the hearing was in Washington and not in Harriman, where it should have been held. It is impossible now, to find, one way or the other whether, had the hearing been in Harriman, Crowder would have called a doctor to corroborate his assertion.)

40. To justify his "nervous condition" from broadcasting, Crowder testified that while his first WDEH sales manager had done a good job before the station went on the air, working up billings of $5000 a month, "in about three or four weeks I noted we started losing customers; he quit the advertising business and, naturally, I checked to see what the trouble was and I learned the gentleman was more interested in the secretary than the radio station, so I had to dismiss him. I in turn employed another gentleman and he was all right for two or three weeks but then he got involved in local politics. Anyway, unbeknownst to me, he took sides, opposed the city officials. We lost some more customers. The station kept going down, going down. So in about three months, frankly I was a nervous wreck. I decided to sell my station [WDEH] and get out of the radio business" (Tr. 1484). (There were no similar operational problems at WHBT, where Crowder was General Manager.) Crowder conceded that he had not fired the second sales manager. He testified (Tr. 1646): "We had a verbal [oral?] agreement he was to stay at the station for a year."

41. *Harry T. Burn* was called as a witness by Folkways. He has lived for 16 years in Rockwood, Tennessee, some 10 miles from

Harriman. Burn is a lawyer and banker. At present he is a director, Chairman of the Board, Trust Officer, and member of the Executive Committee of the First National Bank and Trust Company, with main offices in Rockwood, which he and his family control. Burn's law offices are on the second floor of the Rockwood bank. The bank has branches in Harriman and Kingston, Tennessee, eight miles from Harriman. Burn is also associated with Kenneth J. Crosthwait, now 70% stock owner of Folkways (WHBT, Harriman), in the corporate licensee of Station WOVE, Welch, West Virginia, in which Crosthwait holds a 68-2/3% stock interest. (Burn denied that he was still an officer, director, or was ever a stockholder of record in the WOVE licensee (Tr. 408). He testified that he thought that he had paid for the WOVE licensee's stock, but that it was held in the name of his son, Harry T. Burn, Jr. He later testified that on the books of the corporation the stock was in his (the witness's) name; and that although he intends to give the shares to his son he had not done so and they are still in his possession.) Commission ownership files show that Burn is Secretary-Treasurer, a director, and a 17.1% (second largest) stockholder of the WOVE licensee. Burn's bank had filed, simultaneously with Folkways, a petition to deny the present Crowder application, but the Commission dismissed it for lack of standing and denied it (2 FCC 2d 320, 321, 328).

42. Burn testified that before he had any business dealings with Crowder he had known him "socially, casually" (Tr. 370). About 15 years ago (while Crowder was sole owner of the WNBT licensee), following several conversations between Burn and Crowder, by telephone and in Burn's office, the bank leased space in its Rockwood bank building to WHBT for an auxiliary studio. Burn testified (Tr. 378):

> "We spent thousands of dollars, three or four thousand dollars to convert the third floor, which had no windows in it, into what we thought was a model small-town studio, insulated walls, and windows were put into the studios at a certain angle and things of that nature. . . "

43. Burn did not recall whether the auxiliary studio lease was for three or five years. He had thought that an auxiliary studio was enough for Rockwood, and he did not favor the establishment of a local Rockwood station "because of my views about the economy of the town and what it could support" (Tr. 432). Whatever Burn's views, however, a McMinnville, Tennessee group obtained an authorization for Rockwood and built a station there – WRKH. WHBT vacated its Rockwood Auxiliary studio a few weeks after WRKH began operation on May 9, 1957.

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44. Burns said he saw Crowder "in our building every few days and visited with him occasionally, more socially than business, of course, but I kept contacts with him" (Tr. 378). He considered himself "a friend of Mr. Crowder's . . . he is my customer. There is no enmity on my part" (Tr. 432).

45. Burn testified as follows (Tr. 378-79) to a conversation with Crowder in the main lobby of the Rockwood bank, on a spring morning of 1957 (no one else was present):

> "Well, about 10 years ago, some financial interests from McMinnville, Tennessee – and that is in middle Tennessee about 100 miles west of Rockwood – and they came into the Rockwood picture and obtained a license ultimately, of course maybe a building permit first, and they started a radio station now known as WRKH; Rockwood, McMinnville, and Harriman, WRKH;

> and about that time it became known that Mr. Crowder was either selling or negotiations had some existent status, was selling WHBT, and I believe the new station at Sweetwater, Tennessee, he put in, WDEH I think are the call letters; and I, in a conversation with Mr. Crowder, told him I still – well, I am about to get in my opinion again – that I regretted seeing another station come into Rockwood, because of the factors that I had already discussed with him, that I had not changed my judgment [see Par. 43, above]; and his comment on that was that he had learned the hard way that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, by implication anyway, you had to, to do it, through a subsidy, and then selling the station.
>
> "That was the reason he was not concerned with local competition. He didn't propose to operate a station anyway other than until the time he could sell it."

Burn also testified that Crowder told him that "he went into virgin territory or an uncompetitive community or communities" (Tr. 461), and gave McMinnville as an example, "a small town that had no station, to get you [yourself] a license and franchise and, as I say, build it up" (Tr. 380).

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46. Burn testified that he has talked with Crowder perhaps 20 times in the past 10 years. "I see him occasionally," he said (Tr. 435). But the only Crowder conversations touching on radio to which he testified (in addition to the earlier studio lease negotiations) were the conversation in the spring of 1957, quoted above, and one after Crowder filed the instant application for Harriman.

Before quoting the latter, there should be mention of a financing transaction involving Crowder, Crosthwait (WHBT), and Burn's bank, the First National Bank and Trust Company.

47. When Crowder sold WHBT on July 1, 1956, to Folkways Broadcasting Company, Inc., he took back, as above written, a $70,000 promissory note, secured by a deed of trust and chattel mortgage on the real estate and personal property of the station. By May 1961, the note had been paid down to about $23,000. Folkways needed money to pay off debts and for operating capital. Burn's bank had already lent money to WHBT when Tubbs, Snow, and McDaniel were Folkways' principals, and now that Crosthwait was in control the bank agreed to refinance WHBT's debts. Crosthwait was also a bank customer and borrower. In making loans the bank, however, would have to watch its legal loan limitation, and be sure that there were no loans, like Crowder's, senior to its own security. Crosthwait got in touch with Crowder and learned that Crowder might sell his Folkways note and assign the security. Mr. and Mrs. Crowder came to the bank in Rockwood, selling the note to the bank (indorsing it without recourse) and assigning the security, on May 2, 1961. At the time Crowder did not tell Burn that he would build another station in Harriman. Burn testified that if he had known of the prospective establishment of a station competing with the one which was security for the Folkways obligation now running to the bank, he would not have touched the transaction. He said: "The kind of competition that Mr. Crowder anticipated giving would have been quite detrimental to any loan to any other station" (Tr. 392). The bank had lent Folkways $25,000 at this May 1961, refinancing; it also took a note for $6000 for interest on the $25,000 loan. The $6000 was set up in a separate account because the bank's loan limit in such cases was $25,000. At a second Folkways refinancing, in 1966, the bank lent an additional $25,000 to Folkways. The loan Folkways procured during the first refinancing, which in part

represented money paid to Crowder by the bank, it satisfied in full out of WHBT's operating earnings during the first five years of the loan; of the $25,000 the bank lent in the 1966 refinancing, about $23,000 is still owing. The bank is committed to lend up to $15,000 more to Folkways for a Harriman FM station, for which its application is pending before the Commission.

48. After the bank bought the Folkways note from Crowder, Burn learned that Crowder had applied for a new Harriman station. The bank, as mentioned above, filed a petition to deny the application. Burn testified at Tr. 381:

> "Q. After the objection was filed, did you have any conversations with Mr. Crowder concerning it?
>
> "A. I asked him [in Harriman at some kind of meeting" (Tr. 382)] why he undertook to bring a third station to Roane County instead of going into a town that had no radio station, that he had told me would be his policy, and he said that the management of WHBT was so incompetent that they undertook to operate a metropolitan station in a small town, that they had changed the location of the station on the dial from the middle of the dial to the far right and that they had gone to 5,000 watts power, I believe it is that, and that the tubes they used so many times were not the tubes used when he operated the station and that there was a certain mortality among the tubes due to lightning, or wear and tear and that one item was a considerable expense to the station and the policy of management of that sort would ultimately create a serious financial problem and that he wanted WXXL to be in position to fill the void. Now, the words 'fill the void' are my words and not his.

> "PRESIDING EXAMINER: Do you remember exactly what he said, to the best of your ability, Mr. Burn?
>
> "THE WITNESS: Well, the main thing he did tell me was the cost of the tubes and also the change of the location on the dial. That is the material part of the conversation."

As at the prior conversation quoted in Par. 45, above, no one but Burn and Crowder, said Burn, was present at the dialogue to which he testified at Tr. 381. This is also true of any conversation Burn testified that he had with Crowder.

49. Crowder testified that he is not a friend of Burn's. Burn is not his banker; they do not attend the same church; and they are not members of the same political party. Crowder said that he had not seen Burn for five years before the 1961 meeting in Burn's

[1102]

bank when the Folkways note was sold. He testified that he had had two business dealings with Burn – the first in 1953 when he signed the studio lease and the second the 1961 note sale. WHBT originated broadcasts from the Rockwood studio, but Crowder testified that he had been present at only one of them (Tr. 1711). As to the note, Folkways had at all times regularly paid the monthly installments to Crowder; he did not try to sell it and never talked to Burn about a sale, nor had he placed the note with Burn's bank for collection. The note had a pre-payment clause authorizing Folkways to pay it off before its due date without penalty or interest. Crowder testified (Tr. 1496):

> "When Mr. Crosthwait called me to meet him in Rockwood to pay off the note. That is why I met him; they had the right to pay off the note."

50. Crowder emphatically denied that he had made the admissions to which Burn testified in Par. 45, above, or that he had ever

talked to Burn about his views on radio station ownership. He testified in response to a question by Folkways' counsel (Tr. 351):

> "Q. As the reasons given for selling stations, I put it to you, sir, that the reason you sold the stations here involved was in furtherance of a plan you had previously adopted and in fact discussed with Mr. Harry Burn was that the way to make money in radio stations was not by operating radio stations, but by building the ratings up and selling them, was that not the reason?
>
> "A. I deny that 100 percent."

It will be recalled that Burn testified that Crowder had given McMinnville as an example of virgin territory in which he would build up a station for sale. Crowder, implying that the purported example would have been an absurd one and that he would therefore not have advanced it, points out that McMinnville now has two radio stations, one of which was built before WHBT in Harriman. To buttress his categorical denial that the Par. 48 conversation took place, Crowder said that he lacked the technical knowledge to render the opinions which Burn charged him with having made.

51. *The Community Survey*. The Court of Appeals said (8 RR 2d at 2091):

> "One of the issues presented by Folkways is whether Crowder made efforts and, if so, of

> sufficient extent, to determine the tastes, needs and desires of Harriman, and the area to be served, as required by the standards established by the Commission in its release of July 29, 1960, entitled "Report and Statement of Policy Re: Commission *En Banc* Programming Inquiry." In *Henry v. FCC*, 112 U.S. App. D.C. 257, 260, 302 F.2d 191, 194, *affirming Suburban Broad-*

> *casters*, 30 F.C.C. 1021, we held that under these standards the question is "simply whether the Commission may require that an applicant demonstrate an earnest interest in serving a local community by evidencing a familiarity with its particular needs and an effort to meet them." In the present case the Commission states that, "as a matter of judgment, the manner in which the survey was made leaves something to be desired," with which we agree; but our review of the record leaves us unconvinced that the Commission's clearance of Crowder on this issue should be set aside. We are of like mind on the related issue of misrepresentation, or failure to disclose any material fact, regarding the survey of community tastes, needs and desires. However, the record on this issue influences, though it does not control, our decision on the trafficking issue discussed *infra.*[2]
>
> ---
>
> [2] The record indicates that in making the required survey seven letters from prominent citizens and local organizations were solicited by Crowder's former "commercial manager." These and eight other letters from organizations outside the business community were filed with the Commission. It developed that three of the solicited letters, though written on the letterhead of a local organization, were not official views of the organization, and the signers of these letters also disassociated themselves from some of the possible implications of the letters."

52. When Crowder's Harriman application was filed on October 4, 1961, it contained no community program survey data. His then attorney sent Crowder a letter informing him that survey material was needed. On November 13, 1961, Crowder amended his application to add a series of letters as evidence of his efforts in appraising the needs of the community. Scarbrough, his former commercial manager at WHBT, who made the survey for Crowder, after discussion with him, obtained most of the letters which were submitted by Crowder to the Commission.

(Three of the letter signers later sent letters to the Commission retracting their official endorsement of Crowder's proposed station). The survey material was not used at all as a basis for the proposed programming, nor was the program proposed amended to reflect it.

53. It is only because of the respect which is due any pronouncement of the Court of Appeals that the possibility of a relationship between misrepresentations, if any, to the Commission, as to the program survey, is touched upon here. There will be a fuller discussion of the matter in the Conclusions, where, it is hoped it will be demonstrated that the facts, even if construed to their extreme against Crowder, would not be persuasive under the trafficking issue. Because of this interpretation of the significance of the facts, at this point there will be no pursuit of details beyond what has already been written. Crowder, or Scarbrough for him, made a survey. It may not have been good, and it undoubtedly played no role in WXXL's programming, but it is difficult to understand how any attempt by Crowder unduly to elevate its status before the Commission is indicative of trafficking.

54. *WXXL programming.* Similarly disregardful of logic is Folkways' argument that Crowder's intentions can be read from the departure of the station, in operation since August 11, 1966, from his application program representations. Folkways' counsel loads the major premise as follows (Par. 74, proposed findings):

> "Whether Crowder applied for WXXL in furtherance of a *bona fide* intention to provide programming to meet a community need or whether the application was an implementation of his earlier statements that the way to make money in the radio business was not by operation but by building up the size of revenues and then selling for a profit, can be considered

> against the following findings" (on Crowder's failure to carry programs he had proposed).

The essence of this case, however, is not whether Crowder would run a station finely attuned to Harriman's needs, but whether he would maintain it in continuing operation, though his programming is of minimally acceptable quality. Deviation from program representations, if substantial, may be the basis of a separate issue, but it has nothing to do with trafficking intent. Furthermore, even if Crowder failed to carry or adequately substitute for proposed programs, it would be unfair to judge his performance during this time of troubles.

[1105]

55. Also among the detritus in its barrage against Crowder, Folkways includes the charge that he has departed from his rate card. It need only be said that such competitive tactics imply a desire to stay on the air more than, or at least as much as, an intention to build up the value of a station preparatory to dumping it. For purposes of this inquiry they mean nothing.

[1106]

CONCLUSIONS

56. Issue 1, on which Folkways had "the burden of proceeding with the introduction of evidence" and applicant Crowder had the "burden of proof" (that is, the burden of persuasion), calls for a determination

> ". . . whether the applicant has engaged in trafficking in broadcast authorizations."

The Court of Appeals tacitly defined trafficking in its observation quoted at the beginning of par. 36, above, 8 RR 2d at 2093. Trafficking is the acquisition of broadcast authorizations for sales rather than for service.

57. The Court thought that in the absence of a possible resolution after hearing, it could not accept a conclusion that there was no inconsistency in Crowder's statements to the Commission as to his reasons for selling the station. Now, inconsistency in itself is not an actionable vice, any more than consistency is uniformly a virtue: as is well known, consistency has been called both a jewel and the hobgoblin of little minds. If inconsistency is significant here, it is because Crowder's statements would be capricious manifestations of a consciousness of wrongdoing; and that as he was attempting to bemuse the Commission into inaction on the charge of trafficking, they were tantamount to an admission that he had engaged in that forbidden activity. It has not been forgotten that Folkways asserts that Crowder has made more than an admission inferable from the circumstances; it (and the Bureau) declares that he made a direct, damning avowal of his radio policy to Burn. While the discussion which follows covers "inconsistency" and the alleged admission to Burn separately, there should be some prefatory comments.

58. The age of this case is an immediate barrier to any confident decision that Crowder deliberately tried to mislead the Commission. In connection with the sale of WHBT and WDEH, in 1956, Crowder told the Commission that he wanted to get entirely out of broadcasting. Before that Crowder had applied for a station in partnership with McCoin, his brother-in-law, representing to the Commission (subject to an undisclosed private reservation he had with McCoin that his activity would be limited to the initial operating period) that he would be General Manager. Unless one is willing to attribute to Crowder complete contemptuousness of Commission processes because in one application he represented, at least in terms, that he would be a General Manager and, by definition, active in the day-to-day operation of the station, and in two others, practically contemporaneous, had said that

he would retire from broadcasting, little time need be devoted to this apparent conflict. Nothing in the present record would permit a conclusion that Crowder had done anything but help to establish his brother-in-law in the radio business, and that afterwards he had been a *rentier* drawing profits and doing no work of consequence. Not overlooked has been Crowder's silence toward the Commission's inquiry of May 18, 1956, for greater detail, as the Commission put its own gloss upon the importance of the May 18 letter by granting the assignments despite Crowder's failure to answer it. (Nor is it material *to the trafficking issue* that Crowder had not informed the Commission, in successive renewal applications, that he was really inactive, as his status had not in fact changed.)

59. The foregoing discussion on a *fresh* representation (with the later representations in renewal applications simply repetitive) was inserted immediately after an introductory statement about the age of this case because it points up, by contrast, the nature of Crowder's representations more than six years later. Crowder was then suddenly called upon to defend himself against a charge of trafficking. He told the Commission that he had been *forced* to sell WDEH and WHBT because of ill health. To Folkways, and to the Commission, this did not jibe with his general managership of WLIV. Asked to explain, after another two years, Crowder again laid the sale of the stations in 1956 to ill health in that year, and said that he had not really been active in WLIV. It has already been found that he was, if not in law, at least in fact, a dormant member of the WLIV partnership; and the only part of the representation which remains of concern is that he had been compelled to sell the stations because of ill health in 1956. Folkways frames its indictment as follows (Par. 10, proposed conclusions):

> "Finally on this point, it should be remembered that when first questioned about the inconsistent representations concerning his 'health' in the sales of WHBT and WDEH, *Crowder specifically represented to the Commission that the ill health commenced in 1956. His sworn affidavit of December 27, 1965 leaves no question on that point, but on this record it was shown that he made the determination to sell WHBT and WDEH at least six months prior thereto, putting the stations on the market on June 22, 1965* [1955]" (emphasis Folkways')

That Crowder had decided to sell WHBT and WDEH at least as long before 1956 as mid-1955 is undeniable. Unless there is generous, though not necessarily charitable, appreciation of the circumstances (not, of couse, to be expected of Folkways), it would appear that Crowder sought to divert the Commission from investigation of the trafficking

allegation, conduct which, as explained above, could be interpreted as an admission of impropriety. But the Hearing Examiner refuses to condemn a party for representations made so long after the event to which they refer, and which may be a mistaken reconstruction of an earlier motivation. Despite Folkways' ridicule (Par. 45, proposed findings), there was more than Crowder's spontaneous fancy in his assertion that he had been plagued by misbehaving sales managers at WDEH, since the assignee of that license, in 1956, long before the present proceeding, made a similar statement (see Par. 15, above).

60. Of overriding significance, applicable to the case as a whole, is the fact that the number of stations to which, without more, there could be a suspicion of trafficking, is *one*. Crowder had a minority interest in WHBT from 1947 to 1950, and 100% ownership from then until its sale in 1956. He was a 50% owner of WLIV from 1956 to

1964, when he was persuaded to sell it by his partner-brother-in-law, who may have (and this is purely extra-record conjecture and in any event immaterial to the case) resented Crowder's drawing $5000 to $6000 a year on a $7500 money investment while he was doing little or no work; it *was* mentioned in the findings of fact, however (Par. 32, above), that within a year of his buying Crowder out, McCoin sold WLIV for a sizable gain, inducing a supposition that he had not been heartbroken at Crowder's departure. (The periods for which Crowder held WHBT and WLIV are much longer than the minimum three-year holding which is a condition precedent to assignment without hearing, in the recent past established by the Commission, Rule 1.597.) The *one* remaining station constructed and sold within a fairly short time was WDEH. No matter how strenuously his opponents attempt to magnify Crowder's derelictions, therefore, it is clear that they are attaching a mighty big barnacle to a mighty small hull. The basic material for a charge of trafficking (in criminal law terms the *corpus delicti*) is not present.

61. Although, from the preceding paragraph, the ultimate conclusion of this initial decision is easily forecast, the discussion will not scant the conversations between Burn and Crowder. Crowder in effect accuses Burn of spinning these dialogues out of his imagination; he denies that they took place. It need hardly be stressed that Burn was not a disinterested witness. His bank had filed a petition to deny Crowder's application; and his professions of friendship for Crowder are suspect in light of his testimony. But there is no doubt of his close association with Crosthwait, Folkways' chief stockholder. He has a natural reason to be vexed at Crowder for having possibly, but certainly unexpectedly, impaired the security of the bank's loan to Folkways.

62. The Hearing Examiner does not pretend to the magical power infallibly to divine from their demeanor whether witnesses are telling the truth. Folkways denounces Crowder's testimony on the grounds of demeanor and an alleged demonstrated propensity for lying (see Par. 56, proposed findings); the Broadcast Bureau finds support for Burn's versions against Crowder's denials because of their consistency with the background and the improbability that Crowder would not have spoken more often with Burn than he said he had, particularly in the negotiations for the auxiliary studio lease (see Pars. 35-37, proposed conclusions).

63. The Hearing Examiner has already disavowed possession of a touchstone which distinguishes genuine gold from gilt. As to probability inferred from the plausibility of the setting and the relative power of the participants' recollections, the chances are that on closer inspection the details are too well remembered for credibility by one of the supposed speakers, and that his recollection is so selectively retentive as to impugn the value of the specific testimony. Thus, if Burn is to be exposed to the same niggling inspection to which Crowder has been subjected, it may be observed that he had an imperfect memory of his own immediate affairs (interest in WOVE), but gave what purported to be veristic accounts of the Crowder talks down to details of station authorization. As Crowder points out, however, Burn was wrong about his recountal of the McMinnville area as virgin territory into which Crowder thought it profitable to build a station; here Crowder apparently implies that Burn was making up this seemingly unassailable subsidiary fact out of whole cloth to lend an air of spurious truth to his testimony. Again there is something unreal, in view of Burn's less than unfailing memory, in his testimony that some four years after his conversation with Crowder when Crowder admitted to his addiction to trafficking, and

after Crowder had applied for WXXL, he accosted Crowder and accused him of apostasy from his own creed, just as if they had left off talking a minute before and had now resumed their chat.

64. It is also difficult to make the intuitive leap seemingly demanded by the Broadcast Bureau (Par. 36, proposed conclusions) in suggesting that because Crowder did not, after many years, remember that he must have negotiated for and visited the Rockwood studios, the particulars of Burn's testimony are established.

65. It may be that the Burn-Crowder conversations occurred as Burn testified, and that Crowder at least forgot about them. But enough has been written above to indicate that there are no irrefutable internal indicia of acceptability in Burn's testimony.

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66. Moreover, Burn may have assessed his own recollection somewhat lower than the proponents of his testimony would: note his use of "by implication," and in the second paragraph of his quoted testimony (Par. 45, above), that he seems to be offering his interpretation of Crowder's avowal rather than to be trying to quote him.

67. Burn would have Crowder stand on the same level as a corporate raider continually on the prowl, as if Crowder made it a practice to acquire and sell stations out of hand. But in light of Crowder's actual experience, the alleged vaunting of his buccaneering tactics could only be regarded as a pathetic exaggeration.

68. As promised in Par. 53, above, there follows a more extended account of the Hearing Examiner's opinion of the materiality of the program survey evidence. It is impossible to perceive why a survey undertaken in supercilious disregard of the Commission's adjuration that the aspirant ascertain the community's "needs" is any less predictive of continual operation than a sober, responsible

campaign of bell ringing, buttonholing, and questionnairing. The Commission's optimistic – and laudable – purpose in prescribing a survey or its equivalent is to gain from the applicant, as far as possible, assurance that he will program in the public interest. But the issue in this case is not whether Crowder will operate WXXL in the *best* interests of Harriman. He may, indeed, program the station, if not meretriciously and in complete disregard of his obligations, at least well below the maximum standard of excellence, and still, in the absence of some untoward challenge at renewal time, remain the licensee. So, even if it is assumed that Crowder made a perfunctory, unrevealing, and, to go to an unestablished extreme for argument, completely misleading survey, it has no bearing on his intent to provide a "permanent" broadcast service rather than briefly as a prelude to its sale.

69. Ever since the Commission ruled that a reasoned determination of community interests and desires was an important element of applicants' cases, preliminary campaigns have been classed with the March of Dimes in their esteem. Without denigration of the desirability of need ascertainment (it has already been called laudable in the preceding paragraph) it is also necessary logically to confine its implications. Where the contest is between applicants, each of whom contends that he will serve the public interest better than his rival, it is logically defensible to rest the choice, in greater or lesser degree, upon the quality of their respective surveys. But it is hoped that it has been shown that here the question is quite different, and that the nature of Crowder's survey furnishes no omen of his tenure of the channel. As a Harriman resident and former licensee in Harriman, moreover, he can be expected to know its program needs; and if it could be said in another situation that a sham survey presaged a facetious operation in anticipation of an early sale, it would be of no significance here.

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70. Other pertinent matters have been considered in the findings of fact.

71. Accordingly, IT IS CONCLUDED, subject to the procedure prescribed by the Commission in its Order (FCC 67-746), that the applicant, F. L. Crowder, has not engaged in trafficking in broadcast authorizations (Issue 1).

/s/ HERBERT SHARFMAN
Hearing Examiner
[SEAL] Federal Communications Commission

[1117]

DECISION

Adopted: August 8, 1967; Released: August 9, 1967

Commissioner Bartley for the Commission: Commissioners Loevinger and Wadsworth absent; Commissioner Johnson concurring in the result.

1. This proceeding involves the application of F. L. Crowder, tr/as Harriman Broadcasting Company (hereinafter Crowder), for a construction permit for a new standard broadcast station at Harriman, Tennessee. On December 10, 1962, Folkways Broadcasting Company, Inc., licensee of Radio Station WHBT, Harriman, Tennessee (hereinafter Folkways), filed a petition to deny the Crowder application and requested, in the alternative, that it be designated for hearing on a number of issues, including a trafficking issue and a *Carroll* economic issue.[1] The Commission denied Folkways' pe-

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[1] *Carroll Broadcasting Company, Inc. v. Federal Communications Commission*, 258 F.2d 440, 17 RR 2066 (1958).

tition and granted Crowder's application without hearing.[2] Folkways appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. On January 5, 1967, the Court of Appeals reversed and remanded the case with directions that a hearing be held on the trafficking and *Carroll* issues.[3]

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[2] *Harriman Broadcasting Co.*, 2 FCC 2d 320 (1966).

[3] *Folkways Broadcasting Company, Inc. v. Federal Communications Commission*, 375 F.2d 299, 8 RR2d 2089 (1967).

2. Crowder had built Station WXXL pursuant to his construction permit, and was granted program test authority on August 11, 1966. After the Court of Appeals reversed and remanded the case (January 5, 1967), Folkways requested the Commission to order WXXL off the air pending the hearing; in its Memorandum Opinion and Order designating the Crowder application for hearing (see par. 3, *infra*), the Commission granted Crowder temporary authority to continue operation of WXXL and ordered an expedited hearing. Folkways appealed this ruling to the Court of Appeals, and the Court, on April 26, 1967, held that the grant of temporary authority was improper. On May 1, 1967, the Commission directed Crowder to cease operation of WXXL as of May 3, 1967. Upon petition by Crowder, the Court of Appeals on May 3, 1967, stayed the effectiveness of its order of April 26 and the Commission's order of May 1, 1967, for a 20-day period in order to permit a Commission decision in the matter. On May 23, the Court of Appeals extended this stay to May 29, 1967. On May 29, 1967, the Chief Justice of the United States Supreme Court stayed the mandate of the Court of Appeals until the issuance of a final

order by the Commission in the hearing pending before it, or until August 15, 1967, whichever date is the earlier.

3. Pursuant to the mandate of the Court of Appeals, the Commission by Memorandum Opinion and Order, released March 31, 1967,[4] designated the application for hearing on the following issues:

1. To determine whether the applicant has engaged in trafficking in broadcast authorizations.
2. To determine whether there are adequate revenues to support more than one standard broadcast station in the area to be served without a net loss or degradation to standard broadcast service to the area.
3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience, and necessity.

4. The burden of proof with respect to the trafficking issue (Issue 1) was placed on Crowder and the burden of proof with respect to the *Carroll* (Issue 2) on Folkways. The designation order provided for an expedited hearing by the Hearing Examiner. Hearings began on May 8, 1967, and continued for all or part of 11 days until May 22, 1967, when the record was closed. By Order released May 16, 1967 (FCC 67-550)

[1119]

the Commission ordered that immediately upon the closing of the record, the Examiner certify it to the Commission for a final decision, which was done on May 22, 1967. The parties filed their proposed findings of fact and conclusions of June 12, 1967. Upon consideration of the record, the Commission was of the view that disposition of the trafficking issue (Issue 1) would be facilitated by an initial decision from the Hearing Examiner, and the record was remanded to him for the preparation of an initial decision setting forth his findings and conclusions on that issue (FCC 67-746, released June 26, 1967). On July 3, 1967, Hearing Examiner Herbert Sharfman released his Initial Decision (FCC 67D-29) in which he concluded that Crowder has not engaged in trafficking in broadcast authorizations. On July 13, 1967, exceptions to the Initial Decision, seeking a contrary result, were filed by Folkways and by the Broadcast Bureau. Oral argument was held before the Commission, *en banc*, on July 17, 1967.

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[4] *Harriman Broadcasting Co. (WXXL)*, 7 FCC 2d 161 (1967).

5. We have reviewed the Examiner's findings of fact and conclusions on the trafficking issue in the light of the exceptions and the record evidence. We are in substantial agreement with the findings of fact and they are adopted with the modifications and additions noted herein[5] and in our rulings on the exceptions in the Appendix to this decision. We are unable, however, to agree with the Examiner's conclusions and they are not adopted. We believe that the conclusions reached fail to accord proper weight to relevant and material evidence of record bearing on the question of trafficking, and that undue emphasis has been placed on certain facts, while others of equal or greater significance have not been given proper consideration.

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[5] The following portions of the Examiner's decision are deleted as unnecessary: (1) in par. 18, delete all matter beginning with "While the Folkways" to the end of the paragraph; (2) in par. 19, delete the word "error" after "The" and before it "was repeated," and substitute "incorrect statement"; (3) in par. 24, delete all after the third sentence; (4) delete par. 28 and 29; (5) delete par. 36; (6) in par. 39, delete the clause beginning "Despite his attitude" and ending with "however," and delete the last two sentences; (7) in par. 45, delete "on a spring morning in 1957"; (8) in par. 46, delete third and fourth sentences; (9) delete par. 53, 54 and 55.

JOINT APPENDIX

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,222

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor,

APPEAL FROM DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

VOL. II (Pages 451-891)

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 13 1967

Nathan J. Paulson

Washington, D. C. - THIEL PRESS - 202 - 383-0828

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The trafficking issue

6. Trafficking in broadcast operations occurs when a licensee (or its principals) acquires and/or operates a station for the primary purpose of selling or otherwise disposing of it for profit rather than for the primary purpose of serving the public interest – or, as the Court of Appeals aptly put it, seeking stations "for sale rather than service."

[1120]

7. Crowder here proposes a new standard broadcast station (WXXL) in Harriman, Tennessee, where he was formerly licensee of standard broadcast station WHBT, which he assigned in June, 1956, to Folkways for $80,000. Two months later, in August, 1956, Crowder assigned WDEH, Sweetwater, Tennessee, to WDEH, Inc., for $52,500. In his applications for sale of WHBT and WDEH in 1956, Crowder represented to the Commission simply that he desired to withdraw from the broadcasting business in Harriman and Sweetwater. No other reasons or explanations for the sales were given. In January, 1956, while Crowder was trying to sell WHBT and WDEH, he and his brother-in-law, R. H. McCoin, applied for a construction permit for a new station (WLIV) in Livingston, in which Crowder represented that he was to have a 50 percent ownership interest and that he was to be the general manager of the station.[6] Subsequently, when a question of trafficking was raised in 1962 in connection with Crowder's application for a second station in Harriman, Crowder submitted sworn statements to the Commission that "the true facts" concerning the sale of WHBT and WDEH were that he "was forced to sell his radio interests due to

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[6] In September 1956, Crowder also purchased a soft drink bottling plant in Livingston and began to supervise its operation, including an enlargement of the facilities.

ill health," and that upon a doctor's advice, he "retired completely from active participation in the radio broadcast industry." This explanation was made without any reference to Crowder's participation in 1956 in an application for WLIV in Livingston, in which he had represented that he would be general manager of the station. In response to a Commission letter of December 17, 1965, requesting an explanation of this apparent inconsistency, Crowder submitted a sworn statement, dated December 27, 1965, in which it was stated that in 1956, when he owned WDEH and WHBT, his health became such that he could no longer continue in the day-to-day active operations of the stations, "and for that reason both stations were sold in that year." Regarding his participation in the operation of WLIV, Crowder further stated that while the 1956 WLIV application contained a representation that he would be general manager, it was not his intention to be the general manager on a continuing basis and that he had only agreed to help his brother-in-law get the station on the air.

8. In the WHBT sale, where the price was $80,000 and the "present value" of equipment $18,649.52, Crowder's gain was $61,350.48. In the WDEH sale, where the price was $52,500 and the "present value" $29,995.10, Crowder's gain was $22,504.90. When Crowder sold his interest in WLIV in May, 1964, the physical assets had been fully depreciated. He had therefore recovered his entire partnership investment of $7,500 and, as his basis of calculating gain was zero, the $50,000 which he received was all gain. (Examiner's findings, pars. 33-35).

9. The question is whether Crowder trafficked in any or all of these licenses. In remanding this case, the Court held that it could not accept the Commission's initial conclusion of no inconsistency in Crowder's representations as to his reasons for selling WHBT and

WDEH. The Court stated: "There may be a basis for reconciling the inconsistent representations in a manner which prevents disqualification of Crowder, but the subject needed examination at a live hearing."

10. On the record of this evidentiary hearing, we conclude that Crowder has failed adequately to reconcile his inconsistent representations and has fallen short of meeting his burden of proof on the trafficking issue. In our view Crowder should not be granted another radio station in Harriman because of his conduct with respect to the stations he previously had in Harriman and in Sweetwater. We conclude, on the basis of the entire record before us, that Crowder has not shown that he acquired those stations for the principal purpose of operating them in the public interest. On the contrary, the record indicates that the two stations were treated as properties to be bought and sold at a profit rather than as facilities reasonably to be devoted to serving the public.

11. First of all, Crowder is seeking a station in Harriman, where he previously had one. If his primary interest was in station operation in that community, the normal course would have been to continue the operation of station WHBT, not sell it at a profit and then seek another license. We do not accept the subsequent explanation for the sale of WHBT, i.e., that it was due to ill health, as dissipating this problem. Ill health was not mentioned as a reason at the time of sale, although the application form specifically requested the reason for the sale. Furthermore, no corroboration by a physician was offered by Crowder, although he claims to have relied on a doctor's advice.[7] As further indication that the sale of the station was not

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[7] Walter H. Scarbrough, Crowder's commercial manager at WHBT from 1952 until the station was sold in 1956, testified that he worked "pretty closely" with Crowder, and that Crowder had never complained to him about ill health (Tr. 1385, 1389-90).

in fact required by ill health, Crowder at the same time bought a soft drink bottling plant in Livingston which he personally supervised, spending the mid-week in Livingston. Finally, at the same time Crowder also entered into a partnership in a new station in Livingston, representing to the Commission that he would be its general manager. We are now told that the latter representation was incorrect, and that his participation in the Livingston station was therefore not inconsistent with the explanation given for the sale of WHBT and WDEH. We cannot permit an applicant thus to decide as it suits his purpose which of his inconsistent representations we are to believe. In any event, the other factors already mentioned convince us that there is too large a doubt here to permit a grant of Crowder's instant application.

[1122]

12. The discussion above has largely been concerned with WHBT. We have basically the same problems with Crowder's acquisition and sale of WDEH in Sweetwater. Crowder was attempting to sell WDEH at least as early as June 22, 1955,[8] less than a year after the Commission had granted a license for the station on February 17, 1955, and we are not convinced that this station was

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[8] Crowder originally claimed that he sold WHBT and WDEH in 1956 because of ill health at that time. During the hearing, it was established from the subpoenaed files of Blackburn-Hamilton Company, media brokers, that both WHBT and WDEH had been listed for sale on June 22, 1955. In his testimony at the hearing, Crowder enlarged on his previous statements as to his reasons for selling the stations. He testified that because of difficulty with two of his sales managers at WDEH during the first few weeks of station operation in February-March, 1955, the station lost customers and "kept going down," and that in about three months he was a "nervous wreck" and decided to sell the station (WDEH) and get out of the radio business (Tr. 1484). As noted by the Examiner (par. 40), there were no similar operational problems at WHBT, where Crowder was general manager.

acquired to be operated rather than sold at a profit. Here, again, the reason now given for the sale is not consistent with the rest of the evidence.

13. We are not satisfied as to the credibility of Crowder. First, as pointed out above, Crowder represented that he would be general manager of station WLIV in Livingston which he obtained in partnership with his brother-in-law, McCoin. Crowder prepared and executed the application and represented that he would serve as the station's "General Manager." In his testimony, Crowder admitted that at the time the application was filed he was a broadcaster of experience and that the representation made was a holding out to the Commission that he would be the general manager of the station not only during the construction of the station but also after it went on the air. Crowder further testified that he had a private understanding or agreement with McCoin prior to the filing of the application that he would not participate in the day-to-day operation after the station was constructed. He did not disclose this agreement to the Commission. The same representation was repeated in the WLIV renewal applications signed by McCoin and filed with the Commission on May 6, 1958, and May 2, 1961. The representation was not corrected until the renewal application of April 28, 1964, which was filed by McCoin after Crowder had agreed to sell his interest in the station. In view of Crowder's admitted awareness of the significance of the representation and his knowledge of the existence of an agreement to the contrary, it must be concluded that his representation in the 1956 WLIV application was a deliberate misrepresentation.

[1123]

14. Further, the record also shows that in the application for a construction permit for WLIV (BP-10326), executed by Crowder and filed January 20, 1956, it was represented that Crowder, in addition

to being the owner of WHBT and WDEH, was also the owner of Harriman Billiard Parlor since 1944; and that in the instant application for a new station in Harriman, which Crowder executed on September 30, 1961, it was represented as follows: F. L. Crowder, Harriman Billiard Parlor, "100% owner, 1944 to present." Crowder testified at the hearing that the Harriman Billiard Parlor had not been owned as represented by him. The testimony shows that since 1949 the billiard parlor has been owned by a partnership of Crowder and a Mr. Charles Derrick, with Crowder owning 66-263 percent. At the hearing, Crowder offered no explanation for his misrepresentation to the Commission, except that such entry was an error.

15. These problems concerning Crowder's credibility also affect our judgment concerning his denial of testimony of Harry T. Burn, who said Crowder told him that he acquired stations for the purpose of selling them. Burn was a lawyer and banker called as a witness by Folkways. We shall discuss his testimony at some length, because of the credibility question involved, but we wish it to be clear that we believe Crowder has failed to meet his burden of proof without regard to the Burn testimony.

16. Burn testified that in several conversations with Crowder the latter expressed his business philosophy that the way to make money in radio is not by operation but by obtaining a franchise, building up the gross volume of business, and then selling the station. Crowder categorically denied making such statements, and stated that he met and talked with Burn only twice in his lifetime. The Examiner did not attempt to resolve the conflict in the testimony of the two witnesses on the basis of their demeanor. He concluded (par. 65) that the Burn-Crowder conversations may have occurred as Burn testified, and that Crowder at least forgot about them, but that there were "no irrefutable internal indicia of acceptability in Burn's testimony."

17. Burn has been a resident of Rockwood, Tennessee, for 16 years. His principal place of business is in Rockwood, but his bank, which he and his family control, has a branch at Harriman, approximately 10 miles from Rockwood. Burn testified that prior to 1951 or 1952 he had known Crowder socially, and that at about this time he commenced negotiating with Crowder, who was then the sole owner of WHBT in Harriman, to establish remote studios in Rockwood which then had no local facility of its own. Burn testified that he had a number of conversations with Crowder on this subject, over the phone and at his (Burn's) office, and that as a result of these negotiations, he caused the bank to spend three or four thousand dollars to convert the third floor of the bank building into suitable studio space, in accordance with instructions given him by Crowder as to the required insulation of the walls and special installation of windows. Burn's law offices were on the second floor and he said he was there on a daily basis and that he saw and visited with Crowder during the time the studios were being constructed. Crowder denied that he had any such negotiations or conversations with Burn, stating categorically that he met with or talked with Burn only twice in his entire lifetime, once when he signed the lease for the remote studios in the 1950's, and again in 1961 when he sold his WHBT note to Burn's bank.

18. Burn testified that in early 1957,[9] at the time it became known that some financial interests from McMinnville, Tennessee, were proposing to build a station in Rockwood, he had a further

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[9] We cannot find when this conversation took place, since Burn was unclear on the time and mentioned several different months. He believed that it was about the time a new station was being started up in Rockwood, Tennessee.

conversation with Crowder during which he told Crowder that he, Burn, regretted seeing another station come into the County because of economic considerations; that Crowder commented that you couldn't make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, and then selling the station. According to Burn, that was the reason Crowder was not concerned with local competition, since he didn't propose to operate a station anyway other than until the time he could sell it. Crowder denied that this conversation occurred and stated that in neither of his two meetings with Burn had he ever expressed such an intent or business practice.

19. Burn further testified that he and Crowder had other conversations dealing with Crowder's broadcast business policies. In one of these in 1961, Burn stated he had learned that Crowder was applying for a new station at Harriman and asked him why he had undertaken to bring a third station into Roane County, instead of applying for a station in a community that had no other station, in keeping with what Burn had understood from Crowder was his business practice in this field. According to Burn, Crowder explained that the management of WHBT was so incompetent they had undertaken to operate a metropolitan station in a small town; that they had changed the location of the station on the dial from the middle to the right edge; that they had increased power to 5000 watts; that the tubes used were more expensive; that a management policy of this sort would ultimately create a serious financial problem; and that he wanted WXXL to be in a position to fill the void. (Burn said that the words "fill the void" were his own words.) Crowder also denied

[1125]

this conversation. He stated that he knew little of the technical aspects of station operation and denied generally that he would have had sufficient background knowledge in broadcast matters to have made the other statements attributed to him by Burn in this particular conversation. Crowder also testified that Burn was not a friend of his; not his banker; and not a member of his church; and that he had not seen Burn at any meetings of local civic organizations; or at social clubs; or even walking along the street.

20. Although the record shows that Burn was not a disinterested witness, since his bank still held a WHBT note which it had purchased from Crowder, and had opposed Crowder's application (Examiner's findings, pars. 41 and 47), it does not follow that his testimony must be rejected on that ground, for the facts taken as a whole are consistent with Burn's testimony. WHBT's remote studios were in fact built in Burn's bank building in Rockwood. They were leased and operated for a number of years by WHBT when Crowder was sole owner and operator of the facility. A new station, WRKH, was established in Rockwood and commenced operation on May 9, 1957. WHBT vacated its Rockwood auxiliary studio a few weeks after WRKH began operation.

21. We find it difficult to believe that the WHBT remote studios would or could have been built by the bank in its building in Rockwood without any contact at all between Burn and Crowder, who was then the sole owner of WHBT and its general manager. It seems reasonable that since the space in the bank building was being used for radio studios, there would have been negotiations with Crowder and actual supervision, instructions as to construction, and inspection by him, as testified by Burn. Further, it is reasonable to conclude that Crowder, having been in broadcasting since 1950, possessed the type of knowledge in 1961 that would have enabled him to evaluate the WHBT operation as conducted by Folkways, the present management, and relate to Burn his reasons for filing for the second station at Harriman, in apparent conflict with his indicated policy. However, we also recognize that Burn was vague

as to the date of the principal conversation in which he says that Crowder expressed his philosophy of buying and selling stations. In these circumstances, we retain our doubts concerning Crowder, since Burn's testimony cannot be wholly rejected and is consistent with the objective evidence in the case.

22. In sum, we cannot accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health. After a careful consideration of all the facts and circumstances involved we are unable to conclude that a grant to Crowder of a station in Harriman, Tennessee, would be in the public interest, convenience or necessity.[10]

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[10] In light of our conclusions concerning WHBT and WDEH, we need not resolve the trafficking issue as it relates to the Livingston station (WLIV).

[1126]

The Carroll Issue

23. Since our findings and conclusions regarding the trafficking issue (Issue 1) are dispositive of this case, we need not reach the Carroll issue (Issue 2) or make findings and conclusions on that issue.

Other Matters

24. On June 15, 1967, Folkways filed a petition for reconsideration of our Order (FCC 67-500, released May 16, 1967) in which we directed that, upon closing, the record be certified to us for a final decision so that the case could be expedited. Folkways contended, among other things, that the order changed the normal hearing procedure and deprived it of an initial decision by the Examiner. Upon consideration of the record after certification, we remanded it to the Examiner, on our own motion, for an initial decision on the trafficking issue (par. 4, *supra*). In view of our remand action and our disposition of the case on the trafficking issue, the petition for recon-

sideration is denied as moot. There is also pending before the Commission a petition for an order in the nature of enlargement of issues, filed by Folkways on June 12, 1967. In view of our disposition of this case, we do not reach the question of the need for enlargement of issues, and the petition is dismissed.

25. On July 14, 1967, Folkways filed a motion to correct the transcript. Upon request by Crowder, the time for filing a reply was extended to July 28, 1967. On that date, Crowder filed a response to the motion in which he made no objection to the majority of the suggested changes, but did object to seven suggested changes in the testimony of Harry T. Burn on the ground that such changes are changes in substance and would result in an alteration of the testimony of a key Folkways witness. We have examined the suggested changes to which objection has been made, and believe that, for the most part, they do relate to matters of substance. In view of Crowder's objection, the motion to correct transcript will be granted only to the extent of accepting those corrections to which Crowder has not specifically objected, and will be denied in all other respects.

26. ACCORDINGLY, IT IS ORDERED, That the application of F. L. Crowder, tr/as Harriman Broadcasting Company (WXXL), for a construction permit for a new standard broadcast (AM) station in Harriman, Tennessee (File No. BP-15122), IS DENIED; and

27. IT IS FURTHER ORDERED, That the operation of Station WXXL shall cease at the end of the broadcast day on August 15, 1967; and

[1127]

28. IT IS FURTHER ORDERED, That the petition for an order in the nature of enlargement of issues filed June 12, 1967, by Folkways Broadcasting Company, Inc., IS DISMISSED; that the pe-

tition for reconsideration of our Order, released May 16, 1967 (FCC 67-500), filed June 15, 1967, by Folkways Broadcasting Company, Inc., IS DENIED; and that the motion to correct transcript filed July 14, 1967, by Folkways Broadcasting Company, Inc., IS GRANTED with regard to those suggested changes not specifically objected to by F. L. Crowder in his response filed July 28, 1967, and IS DENIED in all other respects, and the transcript IS CORRECTED accordingly.

FEDERAL COMMUNICATIONS COMMISSION

/s/ BEN F. WAPLE
Secretary

Attachment

[SEAL]

[1128]

APPENDIX

Rulings on Exceptions to the Initial Decision

Rulings on Exceptions of Folkways Broadcasting Company, Inc. (WHBT)

Exception No.	Ruling
1, 2	*Granted* in substance. See par. 14 of our Decision.
3-6, 8, 13-21, 24-28, 32, 41-44 48-51, 56, 57, 59, 63-67	*Denied.* The Examiner's findings adequately summarize the record. Additional findings proposed to the extent supported by the record would not add substantially to our Decision herein.
7, 9, 10-12, 22 47, 61	*Granted* to the extent indicated in pars. 11-20 of our Decision and otherwise denied.
23, 31, 36	*Granted* to the extent indicated by Pars. 15-22 of our Decision, and otherwise denied.

29, 30	*Denied*, as argumentative.
34, 35	*Denied*, not of decisional significance.
37, 38-40, 45, 46 62, 79	*Granted*, to the extent indicated in footnote 5 of our Decision, and otherwise denied.
52, 53, 54, 60	*Denied*. See par. 25 of our Decision.
55	*Granted* in substance. See footnote 5 and pars. 15-22 of our Decision.
68-77, 78, 80	*Denied*. The requested findings are unnecessary in view of our Decision.
81	*Granted* in part and denied in part. See footnote 5 and par. 23 of our Decision.
82	*Denied* in view of par. 23 of our Decision.
83-88, 90-98, 100-102	*Granted* in substance. See pars. 5-22 of our Decision.
89, 99	*Granted* in part and *denied* in part. See pars. 5-22 of our Decision.
103-114	*Denied* as not of significance in view of our decision herein.

[1129]

Rulings on the Exceptions of the Chief, Broadcast Bureau

Exception No.	Ruling
1	*Granted*. See footnote 5 of our Decision.
2, 5	*Granted* to the extent indicated in pars. 5-22 of our Decision.
3	*Granted* in part, see footnotes 5 and 7 of our Decision, and otherwise denied as seeking addition of matter repetitive or not essential in view of our Decision herein.
4	*Denied*. See par. 25 of our Decision.
6-9	*Granted* in substance. See pars. 5-22 of our Decision.

Original

JUL 13

JUL 14 1967

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder tr/as)
HARRIMAN BROADCASTING COMPANY (WXXL))
Harriman, Tennessee)
)
For Construction Permit)

DOCKET NO. 17255
File No. BP-15122

Docket
A/C
Orig 17
7-13-67

TO: The Commission

BROADCAST BUREAU'S EXCEPTIONS TO INITIAL DECISION

* * *

Exceptions to Findings of Fact

Exception No. 1

To that portion of paragraph 18 following the quoted language for reasons set out in the Bureau's Brief, to clarify the findings on the points involved.

Exception No. 2

To that portion of paragraph 38 following the quoted language as incomplete, and considered an ultimate finding of fact as unsupported by the weight of the evidence of record, and to the failure to find in lieu thereof as follows:

> "Crowder testified, as mentioned in the findings at paragraph 19, that, prior to filing the application for the Livingston facility, he had made it absolutely clear that he would not participate in any active capacity in the day-to-day operation of the station; and that his assistance would be confined to the pre-operational stages of securing a construction permit.
>
> "Crowder acknowledged that the Livingston application was executed by himself; that it was prepared under his direction and supervision; that he had represented therein that he would serve as "General Manager;" and that he did not disclose to the Commission his private, but firm, arrangement with his partner, McCoin, not to actively participate at all in the operation of this facility.
>
> "At the time his representation was made, Crowder was a broadcaster of some experience, and he recognized that when he stated in response to the inquiry at Section IV, page 3, of FCC Form 301, that he would be "General Manager" of WLIV, it was intended to represent to the Commission that he would serve in this capacity when the station actually went on the air.
>
> "Crowder testified that this was an error; but he acknowledged that the representation did not reflect the overall future plans of himself and his partner, McCoin.
>
> "This representation was not soon corrected. It was repeated in the WLIV renewal applications (BR-3365) filed May 6, 1958 and May 2, 1961. The

representation was not changed until the April 28, 1964 WLIV renewal was submitted, a date subsequent to the one on which application was made to assign the station to McCoin (April 14, 1964)."

References: WLIV License File No. 2; T. 245-252, 1485-1487, 1716-1718.

Exception No. 3

To all of paragraph 39 following the quoted testimony of Crowder, as argumentative and improper as findings of fact; to all of paragraph 40 as not reflecting in context substantial matters of record and as according undue weight to particular facts while disregarding others; and to the failure to find in lieu thereof as follows:

> "As noted in the findings at paragraph 37 through 39, Crowder had represented in his January 8, 1963 opposition to WHBT's Petition to Deny that the true facts were that he was forced to sell WHBT and WDEH due to ill health, and that on a doctor's advice he had 'retired completely from active participation in the Broadcast industry in 1956.' 1/ The representations of Crowder in his sworn

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"1/ Crowder did not supply an affidavit of the physician in question and he was not otherwise identified on the record. One apparent reason the matter was not pursued further lies in the statements of counsel for Crowder during a bench conference concerning the general subject of Crowder's health. This is here quoted for purposes of convenient reference:

> 'Mr. Bilger: In the first place there is something even further wrong with that in my judgment. You are obviously referring to the statement he filed that his doctor advised him to get out. Now on this insurance form this would not necessarily have been put down by him. It could have been a telephone call. It could have been a country club conversation on the golf course. It could have been a social engagement.
>
> 'He said, "I am nervous." The doctor could easily have said, "get out of the radio business."
>
> 'Therefore, it is valueless.'"

Reference: T. 1687-1688.

statements in the pleadings filed by him are that his health problem and the advise of the doctor occurred and was given in 1956, the year the two stations were sold.

"In his testimony, Crowder enlarged on his prior statements as to his reasons for selling the stations. He testified that he had hired a Mr. Lee as sales manager for WDEH just prior to commencing operation in February, 1955; that he did a good job before the station went on the air; that the billings were about $5,000.00; but that in about three or four weeks the station started to lose business.

"Crowder checked to see what the trouble was and he said he learned that Mr. Lee 'was more interested in the secretary than the radio station, so I had to dismiss him.' This would have been in late February or early March of 1955.

"Crowder further testified that in turn he employed another gentleman and he was all right for two or three weeks (March, 1955), but then he got involved in local politics; took sides in opposition to the City officials; and, according to Crowder, the station lost some more customers. The station 'kept going down, going down. So in about three months, frankly I was a nervous wreck. I decided to sell my radio station (WDEH) and get out of the radio business.' Crowder added at this point that he sold WHBT and WDEH in the same year, 1956."

Reference: T. 1483-1485.

"Walter H. Scarborough testified that he was Crowder's commercial manager at WHBT from 1952 until the station was sold in 1956; that he worked with Crowder 'pretty closely' on a day-to-day basis; that Crowder was at the station during the period of a year or a year and a half preceding the sale; and that as far as Scarborough could tell 'he was in good health.'

"Scarborough later qualified this testimony, stating that Crowder had not been at WHBT during the year and a half preceding its sale as much as he had been in prior years, because he had 'other business interests;' that he could not answer whether this was due to his health; but that Crowder had never complained to him about ill-health.!"

References: T. 1385, 1389-1390.

Original

ORIGINAL FILE

JUL 13 1967

OFFICE OF THE SECRETARY
JUL 14 1967

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY (WXXL)
Harriman, Tennessee

For Construction Permit

DOCKET NO. 17255 ✓
File No. BP-15122

Docketed
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C/C
Orig+19
7-13-67

To: The Commission

BROADCAST BUREAU'S BRIEF IN SUPPORT OF EXCEPTIONS TO INITIAL DECISION

* * *

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* * *

Exception No. 2

The Bureau excepts to the findings at paragraph 38 as incomplete and, in part, to an erroneous ultimate finding. The record bases for the substitute findings are given. The findings as made without reciting other related and material facts do not accord with the weight of the evidence and leaves the impression that Crowder did, as a fact, make an "error" in indicating he would be the "General Manager" of WLIV. The Bureau's position is that this was no error; that it was a direct and deliberate misrepresentation of fact on Crowder's part. The Bureau's requested further findings and conclusions, included under this exception and others set out below, it believes, demonstrate that this is so.

Exception No. 3

As the exception indicates, the Initial Decision's findings on the subject of Crowder's health are in part argumentative. For example, the Initial Decision argues that had the hearing been held

* * *

Conclusions

The question of trafficking must be studied in the light of all of the demonstrative and circumstantial evidence. Seldom, if ever, is it admitted. Therefore, the element of intent must be arrived at through a careful analysis of all of the evidence and particularly that of Burn.

Each case in law is different. The difference may be one of a small degree or a large one, but generally there is a fundamental element common to all cases of one class (essence). The common element in trafficking cases is intent. In some instances, for example, where there are many transactions, intent might be inferred from the activities themselves. But here there are three transactions and this forecloses an inference of intent from "number" alone.

In this case Crowder is alleged to have admitted to Burn that he is in effect, a trafficker. To be clear, if Burn's testimony is accepted as true, it proves the trafficking intent necessary and required for and adverse decision under this issue. That is why the question of credibility was early recognizes as an important and decisive consideration.

The Bureau must conclude on the basis of the record that Crowder is guilty of misrepresentation — not on a single subject or in a single instance, but generally throughout his testimony; not only during the hearing, but on prior occasions, in his affidavits filed in the predesignation pleadings, in making representations to the Commission in various applications; and in his representations in the very application that is the subject of this hearing.

Exception No. 6

The conclusion at the first sentence of paragraph 58 does not accord with the weight of evidence in this case. It is true that the three transactions involved (WHBT, WDEH and WLIV) occurred in 1956 (WHBT and WDEH) and in 1964 (WLIV), but all, or even a major part, of the controlling facts cannot be relegated to that era. The total proof of this is in the reading of the findings themselves (as modified, of course, by the Bureau's exceptions).

Background facts extend to as early as 1947, when Crowder and a group of local businessmen established WHBT at Harriman. But these matters, so far as they are pertinent, are recorded in the Commission's files, which provide the source for a substantial number of findings. Thus, the dates of acquisition and sale are fixed facts; Crowder's representations in his application are certain; Crowder's representation in his pleadings are sure and concurrent with many of the matters of substance here.

Moreover, it must be remembered that WHBT's Petition to Deny was filed in December, 1962, and that this challenge must have served at the very least to jog Crowder's memory then and force recall, so that, with his mental processes so refreshed at that date, he really is not being asked to relate facts so distant as to occasion unreliability, as the Initial Decision infers.

Besides, when Crowder could not remember, he freely said so, and he is not being held accountable for what he forgot, as the

Bureau's findings and conclusions clearly demonstrate. Moreover, Crowder was categorical in his denials in important areas. As to the conversations with Burn, he testified simply that they did not occur. This narrows the question of credibility and sharpens the conflict so that, contrary to what the Initial Decision concludes, we submit that it must be concluded that Crowder deliberately misled the Commission, not "tried" to, but did so.

On these grounds, it is asked that Bureau's Exception No. 12 be allowed.

Exception No. 7

The matters recited in the fourth sentence to the end of paragraph 58 are, in our view, meaningless. For example, the Initial Decision concludes that: "Not overlooked has been Crowder's silence toward the Commission's inquiry of May 18, 1956, for greater detail, as the Commission put its own gloss upon the importance of the May 18 letter by granting the assignment despite Crowder's failure to answer it." As the Bureau has shown, no inquiry was ever made of Crowder. The questions were directed to the assignee and answered by it. See Bureau's Exception No. 2.

Another example is in the recital relative to Crowder's representation that he would be "General Manager" of WLIV. The Initial Decision concludes that little time need be devoted to this conflict. This erroneous conclusion stems from the refusal of the Initial Decision to make complete findings, disregarding substantial evidence of record. As argued elsewhere in this brief and in the Bureau's substitute findings and conclusions, the facts that Crowder was ill (if true); had been advised to get out of broadcasting (also, if true); and reached a firm, positive understanding with McCoin not to be active at the station prior to the time he says he agreed to help McCoin in the preliminary stages of preparing the application and prior to the time the application was filed — these matters all tend to prove that the representation was a deliberate one; known to be false when made; and designed to mislead the Commission. The

circumstance that it was repeated and allowed to stand for nearly 10 years, also, does not advance Crowder's cause. The Initial Decision, in effect, ignores all of these matters and makes it appear that they are of no significance. Reason, logic, and the weight of the evidence in this record persuade that such a conclusion must be held to be in error.

Finally, it is concluded that it is not material to the trafficking issue "that Crowder, had not informed the Commission, in successive renewal applications, that he was really inactive, as his status had not in fact changed." To the contrary, it is material to take these facts into account in deciding the trafficking issue. It may not be dispositive of that issue, and the Bureau will certainly concede this. But it is part of the total evidentiary picture, and, in the context of the events as they occurred, it is an important point. What the Initial Decision does, here and in other instances, is to isolate a single fact and then set about to destroy its value as proof of the major matter in issue.

If this decisional process were proper, very few charges of misconduct could be proved, for in most cases essential evidence of the deeds questioned are within the confines of the minds of their perpetrators. There has to be consideration of the conduct as a whole; of the elemental facts that go to establish the pattern or plan; and of the inferences properly drawn from the concrete facts that are subject to proof. Reason must be applied to the total

structure of proof as it has been developed in the record. This the Initial Decision does not do. This failure hinders or prevents viewing the whole picture in a manner that would enable one to see what it really shows. Such processes can only lead to error such as is here present. For these reasons, the Bureau asks that this exception be allowed.

Exceptions No. 8 and 9

The Initial Decision (paragraph 59), recites: "But the Hearing Examiner refuses to condemn a party for representations made so long after the event to which they refer, and which may be a mistaken reconstruction of an earlier motivation." This reflects an attitude on the part of the Hearing Examiner. Whether Crowder should be held accountable or not must rest on reasoned considerations and should not be allowed to stand on the disposition of the trier of the facts to refuse to weigh the evidence as it was presented. As pointed out earlier, the element of time or of the age of the case is not dispositive of the matters in issue. Nor does it provide a sufficient legal reason for refusing to examine the conduct of Crowder in accordance with the proof as adduced at trial.

As stated in its brief under prior exceptions, the conclusions reached in the Initial Decision fail to accord proper weight to material and relevant evidence of record. This is the case with the bulk of the matters dealt with in these paragraphs (paragraphs 60-70). In certain instances undue stress is placed on certain facts, or the matter is taken out of context. Thus, at paragraph 60, the Initial Decision finds fault with Burn's testimony based on his supposed use of "McMinnville" as the example given to him by Crowder of "virgin territory." The Bureau, above, has shown that in all likelihood Burn did not use the term "McMinnville," or if he did, it was not in the context shown in the testimony on which this conclusion rests. The examples could be multiplied, but the Bureau would make the same basic argument which, in essence, is that due and proper weight has not been given to material and relevant evidence in this record; that undue emphasis has been placed on certain facts, while others of equal significance have been ignored or rationalized to a point of no significance; and that this had occasioned error.

We have set out the Bureau's proposed substitute conclusions. These conclusions, the Bureau submits, are fully supported by the findings as modified by the Bureau's exceptions. They are reasoned and logically flow from these findings and fairly and properly lead to the decision which is warranted by the record in this case.

Exception No. 10

This exception is to the ultimate conclusion and merely recites the ultimate conclusion which the Bureau believes must be made under the trafficking issue.

Respectfully submitted,
George S. Smith
Chief, Broadcast Bureau

by Thomas B. Fitzpatrick
Chief, Hearing Division

John B. Letterman
John B. Letterman
Attorney
Federal Communications Commission

July 13, 1967

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Application of)
)
F. L. Crowder, tr/as)
HARRIMAN BROADCASTING COMPANY)
Harriman, Tennessee)
)
For Construction Permit)

JUL 14 1967

DOCKET NO. 17255 ✓
File No. BP-15122

Docket-2
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B/C
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7-13-6

TO THE HONORABLE, THE MEMBERS OF SAID COMMISSION:

WHBT'S EXCEPTIONS

TO

PARTIAL INITIAL DECISION

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* * *

Exception No. 5. To the failure of the Examiner to find that in the instant application for a new station in Harriman the address listed by

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Crowder is a post office address in Livingston (Official Notice). In making the initial grant without a hearing, by the January 14, 1966 Memorandum Opinion and Order, the Commission recited that Crowder resided in Livingston, Tennessee, some 50 miles away from Harriman (Official Notice). In the instant hearing Crowder claimed that the Commission's recitation was "incorrect", but there was no showing as to any steps taken by him to inform the Commission of the "correct" situation. (Tr. 266).

Exception No. 6. To the failure of the Examiner to find that when the Commission informed Crowder, in 1965, of the apparent inconsistency of his sworn "explanation" for the sale of WHBT and WDEH, viz., ill health of such magnitude that he was "forced" to "withdraw completely" from broadcasting in 1956, and the filing of an application in that very year for a new station in Livingston in which Crowder stated he would be the General Manager, Crowder made the sworn representation that the only reason he had gone into the Livingston proposition was to assist his brother-in-law who wanted to go into the radio business because he, the brother-in-law, was unemployed, having sold his car dealership (see Crowder Affidavit of December 27, 1965 considered on the record at Tr. 1485). However, none of the Commission's files reflect the brother-in-law's alleged car dealership, and the 1956 Livingston application which was prepared and sworn to by Crowder showed the brother-in-law to have a then-current ownership interest in a grocery company in Red Boiling Springs, Tennessee. There was no mention in the Livingston application of the allegedly recent car dealership, notwithstanding the requirement in the application form that the business interests of the partner for the preceding five years be shown. (Tr. 1597 and BP-10326, Table II, Official Notice material). The brother-in-law was dead at the time of the instant hearing, and other than Crowder's version of the brother-in-law's motives, no evidence was adduced thereof. (See Tr. 1312, 1490).

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Exception No. 15. To the Examiner's failure to find that when the question of the correctness of the representations in Crowder's original submission of the so-called "community survey" material was raised by Folkways' petition to deny, Crowder submitted to the Commission under his oath as to the truth and veracity of the matters concerning him an explanation that all of the letters were mailed directly by the writers to Crowder and not even seen in final form by Scarbrough, who actually obtained the letters (see Crowder's Opposition to Petition to Deny filed January 23, 1963, and Tr. 1568-70), while in this hearing it was shown that Crowder obtained the letters directly from Scarbrough rather than from the letter-writers. (Tr. 344, 1575).

Exception No. 16. To the Examiner's failure to find that contrary to the earlier-made representation that all of the letters were sent to him by mail from the letter writers (Crowder Opposition and Tr. 1568-70, supra),

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Crowder rewrote and brought one letter back to the writer (Warren) and told him that it wasn't the type of letter that Crowder wanted and at that time got the writer to sign the Crowder-Scarbrough prepared letter. (Tr. 1660-61, 1761-2). Upon reading the letter prepared for his signature by Scarbrough, brought to him by Crowder, Warren at first declined to sign it, but Crowder told him the matter would be confidential and his name would never be revealed, and with that Warren signed the prepared second letter. (Tr. 1764, WHBT Ex. 36-L).

Exception No. 17. To the Examiner's failure to find that even in testifying in this hearing Crowder was less than frank and candid, which precludes a reliance on any testimonial assertion of his. For example, Crowder first asserted tbat the WXXL rate card contains the rates utilized by him in selling advertising on his station since it went on the air in August. On probing, he conceded that he has sold advertising for less than the rate card rates, however. (Tr. 285). He first attempted to justify the less-than-rate card sales on the ground that he was "meeting his competition", but then it was shown that this explanation wouldn't hold because, for example, where he was selling a 30-second commercial spot announcement for $1.25 a spot on an open rate basis, the "competition" $1.25 rate would apply only on a frequency discount basis, as Crowder himself well knew since he had a copy of WHBT's rate card. (See, e.g., Crowder Ex. 25). Crowder offered the explanation that the only non-rate card sales were for 20-second spots which don't appear on the rate card, but upon further examination conceded that the less-than-rate card deals were not limited to mere 20-second spots. (Tr. 331). Crowder then tried another explanation, claiming "We have a special deal for non-advertisers who don't believe in radio advertising, trying to get them into radio advertising." (Tr. 331). After the record showed that the advertisers getting less-than-rate card rates included those presently using

radio advertising, specifically on WHBT, Crowder changed his explanation again and said that the special deal for non-advertisers "who don't believe in radio advertising" were only those who had not yet advertised on WXXL. (Tr. 1692).

Exception No. 18. To the Examiner's failure to find in connection with an inability to rely on Crowder's testimony, the evidence concerning the Arnold Insurance Agency account and Crowder's testimony relative thereto which was refuted by Mrs. Birchfield. Crowder claimed that he doesn't try to "pressure" advertisers, and he was asked whether he hadn't told a former employee, Mrs. Anna Sue Birchfield, to tell the Arnold Insurance Agency that Mr. Arnold should buy time on Crowder's station because Arnold was getting insurance business from Crowder. Crowder flatly denied such instructions or suggestions. (Tr. 347). However, Mrs. Birchfield testified that during the time she was employed at Crowder's station (a 5-week period during the latter part of September and early October 1966) she had an occasion to contact Mr. Arnold and wasn't able to sell him time and reported that fact to Crowder, whereupon "Mr. Crowder told me that when I did see him [Arnold] to remind him that we had a large amount of insurance that we were carrying with him and to remind him it was coming up for renewal." (Tr. 881). It was elsewhere conceded that Mrs. Birchfield was a truthful witness (Tr. 895), so the finding must be made that Crowder's testimonial assertions cannot be relied upon.

Exception No. 19. To the Examiner's failure to find that outward manifestations can and must be utilized in assaying intention, and since the trafficking issue is in part the question of whether Crowder applied for the station in Harriman so as to provide programming to meet a community need or as the implemention of the earlier-expressed statements that the only way to make money in radio was to obtain a permit, build up the business and then

sell it for a profit (see Burn testimony), manifestation of the intent with respect to programming is pertinent. In this connection, the Examiner should have made the findings set forth in WHBT's proposed findings, pars. 75-78, which findings, for convenience, are summarized here.

Exception No. 20. To the Examiner's failure to find that in his captioned application Crowder represented to the Commission that the following local live programs would be carried, none of which have been: a 30-minute live discussion sustaining program broadcasting the activities of the Harriman City Council, to be carried every Saturday; a 5-minute Harriman School News program, 5 days a week; a 30-minute Saturday afternoon "Student of the Week" live sustaining program; a 15-minute weekly agricultural sustaining program, "County Agent"; a 15-minute farm report, to be broadcast five days a week; a 15-minute "Sports Today" live program on Saturdays; a 30-minute live sustaining, discussion program entitled "Our Civic Clubs", scheduled for every Sunday afternoon; a 30-minute live educational program on Sundays called "Harriman High School Today"; and a 30-minute live sustaining, discussion program scheduled for Thursday afternoons entitled "Youth Speaks". (Tr. 318-322). Further, the Examiner should have found that Crowder made no showing as to what he was in fact programming on WXXL (see Tr. 319-20), and accordingly there is no support in this record for any contention he may make that he applied for the station involved in his proceeding solely from a motive of obtaining a station to render a service to the community.

Exception No. 21. To the Examiner's failure to find that other instances of contradictory and inconsistent statements on the record by Crowder bar reliance on his testimonial assertions. The Examiner should have found, for example, that Crowder volunteered the statement that he doesn't use trade-outs with respect to advertising, claiming that if he buys merchandise for the station he pays for it and the advertiser pays him for

advertising time in cash. (Tr. 1617-18). However, a document in the files of the Blackburn Company, which Crowder's counsel established as containing the information which the broker "would normally acquire from a prospective seller in the course of business" (Tr. 1023, Crowder Ex. 30 for iden.), shows with respect to the remote studio he maintained when he had WHBT that "he has a studio in Rockwood which he rents for $50.00 on a trade-out deal." In addition, in connection with The Printery, for which Crowder has carried advertising on WXXL and from which Crowder has obtained office supplies and materials, it was shown that the advertising spots were carried last fall, yet Crowder has never paid The Printery, nor it him. Crowder then tried to "explain" that if The Printery ever sends him a bill he will pay for the materials (Tr. 1667).

Exception No. 22. To the Examiner's failure to find that although Crowder represented in this hearing that the reason he sold station WDEH and listed it for sale in June of 1955 was because manager problems in the period February 1955-June 1955 resulted in the station's revenues "going down, going down" (Tr. 1484), while information given to the broker at the time, which Crowder's counsel developed on the record must have come from Crowder (Tr. 1025-26),[2/] showed the following:

[2/] With respect to the information sheet, marked on the record as Crowder Ex. 31 for iden., Crowder's counsel asked: "Was the information contained in there acquired, if you know, from the seller? A Well, I don't know, but I don't know where else the information could have come from. Q While you did not do it personally, this is the normal information acquired from a seller when you list it for sale, is it not? A Yes."

Bank Deposits

February	$ 319.65
March	2,204.40
April	3,711.66
May	4,013.43
June	4,191.91
July	3,672.02
TOTAL	$18,113.07

(Crowder Ex. 31, Id.).

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Exception No. 27. To the failure of the Examiner to find, in connection with I.D. Fndg. 15 and the "value" of the assets of WDEH sold for $52,500.00, the following: Although both WDEH and WHBT were always under common ownership until their sales (first commonly owned by Crowder's Harriman Broadcasting Company, Inc. and then by Crowder as an individual trading as the Harriman Broadcasting Company), the application for assignment of WDEH listed as items of the original cost of the station real estate in the amount of $2,000.00 and a building valued at $10,000.00, the former "transferred from WHBT" and the other asserted to have been provided by Crowder's personal funds. The land, which was claimed to have been transferred from WHBT in 1955 for $2,000.00, was written up to a $5,000.00 value in reaching the $29,985.10 claimed value of the assets sold for $52,500.00. (BAL-2240, Exs. 1, 2; Tr. 231-2). In addition, the WDEH assets apparently included some transferred from WHBT, valued at $7,462.07. In the present hearing, Crowder was asked for an explanation as to the transactions concerning the land and the transfer of equipment, particularly since he was the owner of both stations and there would have

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been no reason, except in connection with a sale, for such transaction. (Tr. 232-3, 1669, 1678-9). However, Crowder claimed that neither his records nor his recollection provided any details thereof. (Tr. 231, 1585, 1669).

Exception No. 28. To the failure of the Examiner to find, in connection with Crowder's representations as to the value of the assets of WDEH being sold, and hence the figure needed to ascertain the profit being made on the sale, the following: When Crowder had applied to the Commission for the construction permit for WDEH, he represented that the land and buildings for the Sweetwater station would be leased (BP-9334, Sec. III, p. 1). After the station was constructed and the application for license was filed, on February 1, 1955, Crowder repeated the representation that the land and buildings were leased, and represented that the total cost of construction had been only $17,150.00 (BL-5625, Official Notice material). However, in the January 1956 application for assignment of the license of the station, where WDEH's physical assets were being sold for $52,500.00, he included $12,000.00 as the "original cost" of real estate and building. (BAL-2240, Exs. 1, 2; Tr. 231-2).

Exception No. 29. To the Examiner's Fndg. 15 where he quotes from a statement found in the assignee's portion of the WDEH application (assignee's principal, A. D. Smith, Jr.) which the Examiner says he quotes "merely to show it was made and not for its truth", particularly because although the statement was not adduced in the hearing nor offered by Crowder, and notwithstanding the Examiner's statement that he is not relying on the truth thereof, he subsequently utilizes it for its truth in Concl. 59 in suggesting that he finds support for Crowder's explanation for the sales as opposed to "Folkways' ridicule". (See Concl. 59).

Exception No. 30. In connection with his Fndg. 15 and the repetition of a statement made by the proposed assignee of WDEH, Inc., if the Examiner found and utilized Mr. Smith's statement in his portion of the application as support for Crowder's theory (see the immediately aforegoing exception), he should have found that the referenced assignment application stated that in the first part of 1956 "Mr. Crowder was fortunate in securing a new manager who has shown a very steady increase in business every month", which would have negatived Crowder's explanations offered now that the sale of WDEH was necessitated because of financial problems with managers. (See Tr. 1484).

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor.

Case No.
21,222

PRE-HEARING STIPULATION

The respective parties to this proceeding, by counsel, stipulate and agree as follows:

I. THE ISSUE INVOLVED:

In the Appellant's view, the issue presented by this appeal may be stated as follows:

Whether it was error or otherwise plainly improper for the Appellee to find an intention to engage in trafficking upon the part of the Appellant and consummation of such an intention in (1) the acquisition and sale of a radio station owned wholly or in part by Appellant for ten years (WHBT, Harriman, Tennessee), and (2) the acquisition and sale of a radio station owned by Appellant for two years (WDEH, Sweetwater, Tennessee) where Appellant represented to Appellee that he wished to sell both in order to retire from the broadcasting business in the respective communities in which said stations were located without further indicating in the applications so to sell that such reasons were motivated by the ill health of Appellant caused by successive managers in the absentee-owned (WDEH) facility; where Appellant had on file with the Appellee at the time the aforesaid applications to sell WHBT and WDEH were pending an application for a third radio station in a different community (WLIV, Livingston, Tennessee) in which he was proposed as the "General Manager" and a fifty per cent owner; and where Appellant was not active in the operation of the third station (WLIV) after it went on the air for the eight-year period during which Appellant held his ownership interest therein.

It is the view of the Appellee and the Intervenor that the issue as formulated by Appellant is incomplete and inaccurate in both factual and legal premises, and the Appellee and the Intervenor believe that the issue presented by this Appeal more properly should be stated as follows:

In an earlier decision involving Appellant's application this Court held that:

> "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than servicing. There may be a basis for reconciling the inconsistent representation [to the Commission] in a manner which prevents disqualification of Crowder, but the subject [needs] examination at a live hearing."

Is the Commission's decision entered after such hearing denying Appellant's application under the grounds that he failed to reconcile his inconsistent representations and had not met his burden of proof on the trafficking issue supported by substantial evidence considered in light of the entire record?

II. JOINT APPENDIX

1. The Joint Appendix shall be printed as a separate document and shall be filed at the same time as the reply brief of the Appellant, or if a reply brief is not filed then fifteen days after the Appellee's and Intervenor's briefs are filed.

2. Reference to the record appearing in the briefs of the parties will be to the page numbers of the record as the same is certified to the Court. In the printing of the Joint Appendix, there will be set forth, in addition to the consecutive numbering of the pages of the Joint Appendix, the original record page numbers shown in bold type and indented in a manner which will make it convenient for the Court to locate the pages referred to in the briefs.

3. The Notice of Appeal filed by the Appellant and the Notice of Intention to Intervene filed by the Intervenor need not be printed in the Joint Appendix unless the contents of the respective notices become a subject of argument.

4. The costs of printing the Joint Appendix shall be borne as follows: The Appellant shall pay for the material required to be included therein as a matter of course, including the Commission's Memorandum Opinion and Order from which the appeal is taken, this pre-hearing stipulation, and the material from the record designated by him. The Appellant shall also pay for such other parts of the record as the Appellee determines should be printed in the Joint

Appendix in support of its position. Any material in addition to the foregoing designated by Intervenor shall be paid by the Intervenor.

Respectfully submitted,

DONALD E. BILGER
Smith, Pepper, Shack & L'Heureux
1101 17th Street, N.W.
Washington, D.C. 20036
Counsel for Appellant

LENORE EHRIG
Federal Communications Commission
Washington, D.C. 20554
Counsel for Appellee

JOHN B. KENKEL
Miller & Schroeder
Munsey Building
Washington, D.C. 20004
Counsel for Intervenor

September 19, 1967

[Filed October 11, 1967]

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

PRESIDING EXAMINER: May Mrs. Dahlberg be excused? You are excused, Mrs. Dahlberg.

(Witness excused.)

MR. KENKEL: I will call Mr. Freeman L. Crowder.

Whereupon,

FREEMAN L. CROWDER

* * *

DIRECT EXAMINATION

BY MR. KENKEL:

Q. Would you state your full name and address, sir? A. Freeman L. Crowder, Harriman, Tennessee.

Q. Where in Harriman? A. 565 Margrave Street.

Q. Mr. Crowder, you are the applicant trading as Harriman Broadcasting Company? A. Right.

MR. KENKEL: May I have a rule that this is an adverse witness and we are entitled to so examine him?

PRESIDING EXAMINER: Yes; under the rules, of course, Mr. Crowder, being the party for the opponent, is an adverse witness; there is no question of that. Is there any question along that line?

MR. BILGER: No.

PRESIDING EXAMINER: Of couse not. All right; you may,

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Mr. Kenkel.

BY MR. KENKEL:

Q. You received a subpoena to testify here? A. Yes, sir and a check.

Q. And a check? A. And a check.

Q. You received it on Saturday? A. Yes.

Q. How long have you lived at 565 Margrave Street? A. Twenty-one years.

Q. Twenty-one years, since— A. 1946. I moved to that address in '46.

Q. With whom do you live? A. With whom?

Q. Yes. A. My family, wife.

Q. What does your family consist—

MR. LETTERMAN: I object to this line of questioning.

PRESIDING EXAMINER: Yes, this is getting into minutiae.

MR. KENKEL: May we appraoch the Bench.

PRESIDING EXAMINER: Yes.

(Discussion off the record.)

PRESIDING EXAMINER: All right, the objection is overruled. Would you answer that. Read the pending question, please.

(The last question was read by the reporter.)

THE WITNESS: At the present time, my wife. She lives with me.

BY MR. KENKEL:

Q. And formerly? A. My daughter is living now with me. She is now. She just came back home recently, four or five months ago.

Q. Mr. Crowder, you formerly had a radio station in Harriman prior to the instant one? A. Right.

Q. And you owned it as an individual or partnership? A. Both. I owned it as a partnership and as an individual.

Q. When did you own it as an individual? A. From 1950 to '56.

Q. Were you the sole owner from '50 to '56? A. Right.

Q. And in '56—well, when did you change into a partnership? A. It was a partnership before—1950.

Q. Let's get this straight. A. The station was constructed in 1946 as a partnership.

Q. Of whom? A. A group of businessmen in Harriman, Tennessee.

Q. It was a corporation? A. Yes.

Q. Which was it? Partnership or corporation?

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A. Well, a corporation, yes.

Q. It was a corporation? A. Right.

Q. And you subsequently acquired all of the stock in the corporation? A. Right, in 1950.

Q. In 1954 you changed it or had it assigned to you as an individual? A. I don't remember the year.

Q. You don't remember? What did you do? A. It was at least a couple of years after that.

PRESIDING EXAMINER: Would you raise your voice, Mr. Crowder, and Mr. Kenkel, too.

MR. BILGER: Yes; I can't hear the questions.

PRESIDING EXAMINER: All right; I think this is a problem. This is off the record.

(Discussion off the record.)

PRESIDING EXAMINER: Mr. Kenkel, may I ask something to attempt to straighten out in my own mind these dates?

MR. KENKEL: Yes.

PRESIDING EXAMINER: In '46 the construction permit was granted for the station in the name of a corporation?

THE WITNESS: That is correct, Harriman Broadcasting Company Incorporated.

PRESIDING EXAMINER: In 1950—was that the next date?

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THE WITNESS: 1950 is when I purchased it.

PRESIDING EXAMINER: You purchased it? In other words, you bought all of the stock of the corporation in 1950?

THE WITNESS: Yes.

PRESIDING EXAMINER: When was the construction permit then assigned to you as an individual? Was it in 1950?

THE WITNESS: Yes, sir.

PRESIDING EXAMINER: In 1950; all right. The reason I asked is because I heard a date "1954." I imagine that was an error.

THE WITNESS: It, of course, was a corporation when I purchased it, but I had the corporation dissolved. The year, I don't remember.

PRESIDING EXAMINER: I see. Somewhere between 1950 and '54, is that it, you dissolved the corporation?

THE WITNESS: Yes. I surrendered the charter.

PRESIDING EXAMINER: I see; I understand.

BY MR. KENKEL:

Q. You don't know the year, is that correct? A. I don't remember.

MR. BILGER: I have a point here. I am not quite sure what the answer is, but I note in inquiring of the witness, the Examiner used the term "CP"; in 1946 it was "CP" and in 1960 the "CP" was changed.

PRESIDING EXAMINER: I mean the license.

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MR. BILGER: I am sure that is what the record meant but we do have a cold record sometime.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. Mr. Crowder, I show you what is a WHBT license file maintained by the Federal Communications Commission, and I see therein a letter of September 16, 1954 addressed to Miss Mary Jane Morris, two "r's" and one "s," Secretary of the FCC, saying, "It is my intention to dissolve this corporation. Please send me the necessary forms that I will be required to file with the Commission." Signed, "Very truly yours, F. L. Crowder." A. That is my signature.

Q. You did write that letter on the date shown? A. I did.

Q. Did you subsequently in 1954 make application to the Commission for assignment of Station WHBT from the Harriman Broadcasting Company, Inc., to you as an individual? A. That I don't remember. If I didn't it was an oversight, I am sure.

Q. Again, from the Commission files I show you an application labeled BAP253 and BAL1919, bearing date of December 4, 1954, and I see two signatures, F. L. Crowder, one as President of the Harriman Broadcasting Company, Inc., and the other as individual owner. Did you execute that application, sir? Take a moment to look at it.

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A. Those are my signatures.

Q. Does—There is Exhibit 1 there, which states: "F.L. Crowder, holder of 100 percent of the stock of the Harriman Broadcasting Company, Inc., desires to discontinue doing business as a corporate form. After the Commission approves this assignment, he will do business as an individual owner." Is that your statement and application? A. Right.

MR. KENKEL: May I show the Examiner and then ask to take official notice that the Commission's files show Application BAP253 and BAL1919 was granted December 14, 1954?

PRESIDING EXAMINER: What are you asking me to take official notice of, Mr. Kenkel?

MR. KENKEL: Commission's grant of the application on December 14, 1954.

PRESIDING EXAMINER: I see, just the grant of the application and not the application itself?

MR. KENKEL: Well, the witness has testified to the application. To clean it up, I ask you take official notice of the application.

PRESIDING EXAMINER: Any objection to taking official notice of the application under the fact of the Commission's grant?

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MR. LETTERMAN: Is that a "316"?

MR. KENKEL: Yes, it is a "316."

MR. BILGER: May I ask if Mr. Kenkel is going to supply a copy to counsel?

MR. KENKEL: I do not intend to, and that is why I don't think it is necessary to take official notice. The witness agrees the material is here, and as far as I am concerned, he testified to the fact, so I am not going to supply copies.

PRESIDING EXAMINER: All right; I will take official notice, but it is understood if any point is made of a portion, of anything of which official notice is taken, the matter will be supplied in the proposed findings, because it is difficult to get copies sometimes of these documents, as you understand.

BY MR. KENKEL:

Q. Showing you, sir, that Application BAP253 and BAL1919, I see listed there that it concerned two stations: WHBT, Harriman, Tennessee (license), and WDEH, Sweetwater, Texas. A. Sweetwater, Tennessee.

Q. Is that correct? A. Yes; right.

Q. The corporation, Harriman Broadcasting Company, Inc., then owns two stations: WHBT and WDEH, Sweetwater, Tennessee? A. WDEH had not been constructed—had not been constructed. I think it is just a construction permit,

Q. Well, the Commission's permit and constuction permit

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had been issued for WDEH, had it not? A. Probably. The best I remember, yes.

Q. When was WDEH constructed? A. 1954 is the best I recall—I mean 1955.

Q. 1955? A. I believe that is right. I believe we went there in February, 1956. It was under construction when that was filed.

Q. It was under construction? A. I guess that is right. From 10 or 12 years back it is hard to remember.

Q. Do you want an opportunity to look at the files? A. No.

MR. LETTERMAN: If there is a point made of it, Mr. Examiner, we should be certain of the dates, because, well, for one reason the dates are here in the file. The pertinent dates—

PRESIDING EXAMINER: All right; if there is a question of establishing the dates, let's establish them from the record rather than from Mr. Crowder's memory.

BY MR. KENKEL:

Q. There came a time, didn't there, sir, that you entered into a sales contract for WDEH, Sweetwater, Tennessee?

MR. LETTERMAN: Well, we haven't—

PRESIDING EXAMINER: Well, is the date February, 1955 that WDEH was constructed and went on the air?

MR. LETTERMAN: Do you know, Mr. Kenkel? If so, we can

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stipulate. It would be a simple matter.

MR. KENKEL: May we get the files? I was satisfied with the answer I got. If someone else wants to go further—

MR. LETTERMAN: The reason I asked was, the gentleman was not certain as to when it was constructed. If it is material and we are going to utilize it—

MR. KENKEL: Let the record show I offered—Let the witness look at the file and testify from it. I will get the file and we will get the date, sir.

MR. LETTERMAN: All right.

MR. KENKEL: Mr. Examiner, the WDEH license file is here in the room. Mr. Letterman, Mr. Bilger and I have gone through it. We have the following pages as reflected by the file: The issuance of the Construction Permit BP9334, September 15, 1954; the Commission's wire authorizing WDEH to conduct program tests is dated February 4, 1955; the Commission's license for WDEH issued February 17, 1955. May we have official notice of those facts as shown in the file?

MR. LETTERMAN: I will stipulate that those are the dates. I think we can do that.

MR. KENKEL: Do you agree, Mr. Bilger?

MR. BILGER: I agree the file reflects those dates.

MR. KENKEL: Thank you.

BY MR. KENKEL:

Q. Mr. Crowder, you subsequently sold WDEH, did you not?

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A. Yes.

Q. Who handled it? Blackburn and Marshall? A. Blackburn-Hamilton.

Q. And Mr. Cliff Marshall? A. Cliff Marshall.

Q. You first talked to Mr. Marshall about selling WDEH in 1954, did you not? A. How could I talk about selling something I didn't even own?

Q. You had the construction permit for WDEH, according to the file, in 1954? A. Yes, sir, I had the construction permit. That doesn't mean it was constructed, though.

Q. Supplying that date to you for your information, to give you a frame of reference, and we also supplied the other date, the date of license as February 17, 1955, when did you first talk to Mr. Cliff Marshall of Blackburn and Hamilton with respect to the sale of WDEH? A. I don't remember. I don't remember.

Q. Sometime during 1955? A. I don't remember.

Q. Isn't it true, sir, you had completed the arrangements for the sale and entered into a contract for sale of such station by early January, 1956? A. I believe that is correct.

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Q. Now, the negotiations and discussions both between you and the broker and the prospective purchaser culminated in a contract in January, 1956—When did they start? A. I don't remember. I can't remember those dates.

Q. Approximately? A. That is 13 years ago. I don't know.

Q. You will agree with me, won't you, Mr. Crowder, you don't sign a contract for the sale of a radio station immediately, that you give some consideration to it, that there are negotiations back and forth—

MR. BILGER: I object.

MR. KENKEL: Wait a minute.

MR. BILGER: Sorry—

PRESIDING EXAMINER: Wait. What is that, Mr. Bilger?

MR. BILGER: The way he is phrasing the question, I object to the frame of the question, "What is generally done?"

PRESIDING EXAMINER: "Generally"; I agree that the witnesses cannot be compelled to answer on a general basis. You may rephrase the question, Mr. Kenkel.

Q. Mr. Crowder, you don't want this Examiner and the Commission to believe that the first time you gave any consideration to selling WDEH was the very date the contract therefor was executed?

MR. LETTERMAN: That question is argumentative.

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PRESIDING EXAMINER: All right; I agree. The objection is sustained. All right; rephrase it in a different way.

MR. LETTERMAN: May we have a point of clarification. Under

42(b) of the Civil Rules of Procedure, Federal Rules of Civil Procedure, it is true that a person can utilize leading questions for the purpose of examining a witness such as Mr. Crowder, so-called adverse witness, but that does not mean that it is coterminous with the word "cross-examination." It is not. Leading questions and cross-examination are two separate things, sir.

BY MR. KENKEL:

Q. Mr. Crowder, you didn't first give consideration to the sale of WDEH on the date of the contract of sale; it was sometime prior thereto, was it not? A. I don't know.

Q. You don't know? A. I will tell you what I will do. I will be willing to take Mr. Marshall's statement. I will take that for the record.

Q. That is, the time you first discussed with him the sale of WDEH? A. Yes, sir.

MR. LETTERMAN: On this point may I request, if there is correspondence between you and Blackburn and Hamilton on this sale, that that correspondence be produced, if it is in the record, be produced for the purposes of this examination.

PRESIDING EXAMINER: I think you should address that to Mr. Bilger, Mr. Lettermna. Is it possible to produce that correspondence if it is significant?

MR. BILGER: Mr. Examiner, the hearing is in Washington. I will certainly inquire of my witness at the first available opportunity and respond. I see no objection to producing it if we can get it in time or if we have it.

PRESIDING EXAMINER: All right.

MR. LETTERMAN: Another point. I want to be absolutely clear as to what Mr. Crowder is doing. Is he waiving any privilege he might have as to communications between himself and Blackburn and Hamilton concerning this transaction? I think he did say he has no objection whatsoever if this matter is gone into with Mr. Cliff Marshall.

PRESIDING EXAMINER: Is Mr. Marshall an attorney?

MR. KENKEL: Not to my knowledge.

PRESIDING EXAMINER: Where is the privilege?

MR. LETTERMAN: The privilege would lie if this is a business transaction, there was certain information that was conveyed between himself and Mr. Marshall, there might be a privilege there.

PRESIDING EXAMINER: I don't recognize any privilege, Mr. Letterman, unless it was attorney-client privilege.

MR. LETTERMAN: Fine.

MR. BILGER: I might say a word here. I believe the limit

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on my client's willingness to adopt a statement was limited to: he said he would accept Mr. Marshall's word as to when negotiations were entered into. It does not extend beyond that.

PRESIDING EXAMINER: All right, sir; we are not going to get into heresay.

MR. BILGER: I don't know where it is leading at all.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. If Mr. Marshall supplies a statement that these negotiations started prior to October, 1955–if he did, you would accept that statement? A. October, 1955?

Q. Yes. A. I will accept Mr. Marshall's statement, yes, sir.

MR. KENKEL: Thank you. If I may have a minute here to look for this. I am sorry, Mr. Examiner; I have the notes and other dates but I thought, for accuracy, we ought to use the files here, but I don't seem to find WDEH license in File Number 2. Well, to move along, may we do this–Off the record.

(Discussion off the record)

PRESIDING EXAMINER: Back on the record.

MR. KENKEL: To move along I will supply the dates I have and they will, of course, be subject to check against the files which we can turn up in WDEH File Number 2.

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BY MR. KENKEL:

Q. Mr. Crowder, you entered into a contract with Marto Broadcasting Company, Inc., for the sale of WDEH on January 18, 1956, did you not? A. In January; I don't remember the exact date.

Q. Well, accept for the moment, if you would, sir, my statement that the files in the Commission shows the contracts were being executed January 18, '56. A. I admit entering into the contract, yes.

Q. You proposed to sell WDEH to Marto Broadcasting Company, Inc., for $52,500? A. Correct.

Q. And the Commission file number, according to my notes, for that proposal, is BAL2240. Who was Marto Broadcasting? It was a corporation, but who were the principals involved? A. The only one I knew was Mr. Marvin Thompson. I don't know about the others. I never met them.

Q. When did you first discuss with Mr. Marvin Thompson the sale of WDEH? A. Mr. Cliff Marshall contacted him. I don't remember. Incidentally, the sale didn't materialize.

Q. That is my next question. The sale didn't materialize? A. I got what is known as a McFarland letter. They were evidently opposed to Mr. Thompson owning a radio station.

Q. That application was withdrawn July, 1956?

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A. It was in '56. I don't remember the dates.

Q. After Marto, you arranged a new sale of WDEH, did you not? A. Correct.

Q. That was to who? A. Mr. Arthur Smith, Chattanooga, Tennessee.

Q. Is he a corporation or individual? A. I don't remember.

Q. You again proposed to sell WDEH by contract dated July 24, 1956 for the sale price of $52,500? A. Again, I don't remember the date. I agreed to sell.

PRESIDING EXAMINER: What was that sale price, Mr. Kenkel?

MR. KENKEL: $52,500. And I supply for the records, so you can check, the note I have is to the Commission file number with respect to that transaction and it is BAL2240.

BY MR. KENKEL:

Q. I hoped we would have the original file; it would make it easier Mr. Crowder. I show you what I represent to you, for the purposes of this examination, as a photocopy of the first assignment we talked about—well, excuse me, about the first assignment we talked about, that is to Marto Broadcasting Company, Inc., BAL2240.

As I say, I hoped I had the original files here. Accepting for the moment my representation this is a total copy of what appears in the Commission files, I direct your attention to

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paragraph 3 of page 1 of FCC Form 314, which question is: "Give a full statement of assignor's reasons or purposes for requesting this assignment." Am I correct your answer is— A. That is the suggestion of my attorney.

Q. Excuse me; let me read this. This is the answer therein appearing. "Assignor desires to withdraw from the broadcasting business in Sweetwater at this time and believes assignee will bring a broadcast service to the Sweetwater community that will be in the public interest." Now, that application, turning to page 2 thereof, is dated January 28, 1956. A. Yes.

Q. Made by F. L. Crowder trading as Harriman Broadcasting Company, that is you, as an individual? A. That is right.

Q. And that is your signature thereon appearing? A. Yes, sir.

Q. Exhibit 1 of that application, the exhibit is numbered Exhibit 1 and it is labeled "Original Costs of WDEH" and contains entries therein. I am directing your attention to the entries in the first column, the first column of figures, that is, under the column labeled "Original Costs." The total of that is $31,147.50? A. That is what is on the paper, yes, sir.

Q. Was that the original cost? A. That is what my accountant says.

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Q. Under the next column, "Present Value," the total is $29,985.10? A. That is the accountant's figure.

Q. That is for real estate, buildings, transmitting equipment, including tower and ground system, studio equipment, air conditioner and ducts, that is the then total present value, is that correct? A. That is the accountant's figure.

MR. LETTERMAN: Mr. Examiner, we have to be clear on the point. Who signed the application?

MR. KENKEL: Prior to going to Exhibit 1, I asked and showed Mr. Crowder page 2 of the application, which shows it is signed by F.L. Crowder, and he said it is his signature.

MR. LETTERMAN: All right.

BY MR. KENKEL:

Q. Turning to page 3 of the form, and I just directed your attention to Exhibit Number 1, which shows–

PRESIDING EXAMINER: Exhibit 1 on the form?

BY MR. KENKEL:

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MR. LETTERMAN: All right.

BY MR. KENKEL:

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PRESIDING EXAMINER: Exhibit 1 on the form?

BY MR. KENKEL:

Q. Exhibit 1 of the application–

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. –page 3 refers to Exhibit 1, does it not? A. Yes.

Q. It shows it was prepared–"F.L. Crowder (2)," with

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the explanation–that means it was under your direction? A. Yes; the attorney did that.

Q. The attorney did that? A. Yes; Norman Jorgensen.

Q. Now, that was the proposed sale to Marto which did not materialize, was withdrawn? A. I don't know. What was the date of that?

Q. I am sorry; the application with respect to which I was just questioning you concerned Marto. A. I don't know. I don't know.

Q. Let's make sure you realize it. Before I started, sir, I showed you the application form, copies of it that I have, and this is one concerning Marto. A. Yes.

Q. You understood that? A. I do now; Marto.

Q. You didn't at the time? A. You mean when you talked to me a few minutes ago?

Q. Yes. A. I didn't know it was to Marto.

Q. Take another look. That is to Marto. On the basis of your understanding now, this is a proposed sale to Marto, do you want to change any of your prior answers? A. What prior answers? No, I don't want to change the prior answers.

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Q. All right, sir; fine. I show you cover page of a copy of an application in the Commission's file of Station WDEH labeled BAL2399 and it shows that the–Strike that. It is an FCC Form 314 and it proposes the assignment of license of WDEH—Do you follow me? A. Yes.

Q. —from F. L. Crowder doing business as Harriman Broadcasting Company to WDEH, Inc.? A. Yes.

Q. That is the submit sale, is it not, sir? A. I suppose. Where is the rest of it? Why give me one sheet? Why not give me all of it?

MR. KENKEL: May we have a brief recess to get the file?

PRESIDING EXAMINER: Yes. Let us take a five-minute recess.

(Whereupon, at 11:05 a.m. a recess was taken until 11:10 a.m.)

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PRESIDING EXAMINER: Let us go on the record.

MR. KENKEL: I think the record should reflect during the brief recess Mr. Letterman obtained file WDEH No. 2.

BY MR. KENKEL:

Q. Mr. Crowder, I am showing you a file maintained in the Commission, labeled, WDEH No. 2. Specifically, at the time of the application about which I was questioning before the recess, BAL-2399 with the name of the assignee, WDEH, Inc. Will you take a look at it, sir? A. That is my signature.

Q. That application was executed July 30, 1956? A. Right.

Q. By the way, while we are here, I see the notary is Walter Scarborough? A. Correct. He was an employee of mine at the time.

Q. WHBT or WDEH? A. WHBT.

Q. Exhibit 1 of that application has columns labeled, "Items, Original Cost, Present Value," etc.? A. Right.

Q. And the total of column number one, original cost, is $31,147.50? A. Correct.

Q. And the total under "Present Value" is $29,985.10? A. That is right.

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Q. Now, the contract of Exhibit 3 of that application is dated July 24, 1956? A. Right.

Q. And that is between you and Tommie Crowder, your wife, as sellers, and WDEH? A. Correct.

Q. And for WDEH, Inc., it is signed "Arthur Smith, Jr.,"? A. That is right.

Q. That is the Arthur D. Smith to whom you made reference earlier? A. Right.

Q. On page 1 of that application, sir, paragraph 3, which says "Give a full statement of assignors reasons or purposes for requesting assignment." Is it true this is the response thereto, "Assignor desires to withdraw from the broadcasting business in Sweetwater at this time and he believes the assignee will bring a broadcast service to the community that will serve the public interest"? A. Correct.

Q. Mr. Crowder, for WDEH, after you got the initial construction permit, did you subsequently file an application for increase of power? A. Yes, sir.

Q. Again, from the Commission's WDEH file, I show you an application labeled, "BP10752," and ask you if it is the

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application you filed for WDEH to increase power? A. Yes, sir. It is.

Q. According to the copy here it was executed August 9th? A. 9 August, 1956.

Q. That was to increase power from 500 watts daytime to 1 kilowatt? A. Right.

MR. BILGER: Point of clarification, please. Was that the date the application was signed or received by—

MR. KENKEL: August 9, 1956, is the date shown for execution according to Commission's file, it was received August 15, 1956.

BY MR. KENKEL:

Q. When was the sale to WDEH, that is, Arthur Smith Corporation, when was it, do you recall? A. I believe it was September, 1956, the best I remember.

Q. There is a letter in the file from D. F. Prince, attorney, and as I recall he was the attorney for Arthur Smith, saying it was consummated September 5, 1956, is that your recollection also? A. I will take that date, yes, sir.

Q. You have been operating Station WXXL in Harriman since when? A. August 12, 1966.

Q. August 12, 1966?

A. Right.

Q. Was the station on the air prior to that time? A. Yes, in Texas, the test program at night with a dummy antenna, if that is what you mean?

Q. What was involved in the test program? A. Testing the equipment. The engineers were testing the equipment to see if it was on frequency, I suppose.

Q. You were at the time some of the tests were made? A. Part of the time. Yes.

Q. How about the night of the primary election in August, 1966, you were at Station WXXL, were you not? A. I was.

Q. During that nighttime, what the matter of the election broadcast over the station facilities? A. Not that I know about.

Q. The results of the primary elections were not read over the air? A. Not that I know.

Q. How long were you there that night? You had a party at WXXL, a post-election party? A. You might call it a party.

Q. A number of people were there, weren't they? A. Right.

Q. You stayed there for how long? A. I was there until after midnight.

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Q. After midnight. What time did you leave? A. I don't remember. I don't remember.

Q. It is your testimony you didn't hear primary election results, the returns read? A. Not on the station, no. I don't remember if I did. I recall we had a television set there tuning in the Knoxville station giving the results.

Q. I am talking about results from the wire off of the newspaper being read over the station facilities that night? A. If I did, it is news to me.

Q. This is the first time you heard of it happening? A. Right.

Q. How many employees do you have at WXXL now? A. Seven.

Q. Give us their names? A. Kenneth Bonham. Jack Leonard. Virginia Jenkins.

Q. Is that Mrs. R.W. Jenkins? A. Right. Bill Jenkins.

Q. Bill Jenkins, that is her son? A. Correct.

Q. He is a high school student that works part-time, he is a part-time employee? A. Right. Patrick O'Shea, and he is part-time.

Q. He is also a high school student? A. Right. Julia Crowder, full-time.

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Q. Who is Julia Crowder? A. She happens to be my daughter.

Q. How long has she been working there? A. Let me see, about four months, I would say, approximately four months.

Q. Anyone else? A. Yes. Star Rose, full-time.

Q. Is she working there now? A. No, not now, she is in the hospital, she will be back this week, supposed to.

Q. She has not worked there two or three weeks? A. Two or three weeks.

Q. She is still in the hospital? A. She was, she is not now. She is supposed to be back Wednesday.

Q. Ken Bonham you mentioned is a contract engineer, not an employee, isn't he? A. Right.

Q. How about Jenkins? Is he full-time? A. No.

Q. Mrs. Jenkins, I am sorry. A. She is.

Q. So the only full-time employees who are not family members, who were at the station employed there last week, were Mrs. Jenkins, Mr. Leonard, period, you had only two full-time

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employees at the station last week? A. Last week? Yes, the salesman disappeared. I had a full time salesman. He is—but I have another salesman. I forgotten the saleslady I employed, I hired Monday.

Q. What Monday? A. This Monday, full-time.

Q. This Monday, but she was not on the payroll last week? A. I don't mean Monday. I mean Thursday of last week, that is when she started.

Q. Thursday of last week was May 3rd? A. No, May 4th.

Q. I am sorry, May 4th. She didn't start until May 4th.

MR. LETTERMAN: May we have her name as long as you are speaking of her?

THE WITNESS: Mrs. Shirley McGhee.

Q. McGee or Magee? A. I believe it is M-c-G-h-e-e.

Q. Is Mr. Scarborough employed at WXXL? A. No, he left in January.

Q. January of 1967? A. Right.

Q. He was your station manager? A. Right.

Q. For how long? A. From August to first of December.

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Q. First of December? A. Yes.

Q. And he continued in employment there until— A. —until January, the latter part, I believe.

Q. In some other capacity? A. In sales.

Q. In sales? A. In sales.

Q. Mr. Scarborough worked for you previously in your previous broadcasting operations? A. Yes.

Q. You told me earlier—

PRESIDING EXAMINER: Mr. Crowder and Mr. Kenkel, please let's complete before we answer. The questions should be complete before the answer is given, and so on, otherwise the reporter has a difficult time getting it.

BY MR. KENKEL:

Q. You told me earlier that he worked for you when you owned WHBT at Harriman? A. That is right.

Q. And during this earlier employment in what capacity was he employed? A. He was a sales manager, salesman.

Q. How long was he so employed? A. That I don't remember.

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Q. Several years, was it not? A. I would think two or three years, I would think, yes. I have to check my records.

Q. He was still employed by you at WHBT at the time you sold the station in 1956? A. Correct.

Q. What employment did he have with you after 1956, that is, between 1956 and August, 1966, when you told us he commenced employment at WXXL? A. Not any.

Q. No employment at all? A. No, sir.

Q. Neither as a full-time or part-time employee or a contract agent? A. No, sir.

Q. Where is Mr. Scarborough working? A. He was a, he was with a local newspaper, the Harriman Record.

Q. Mr. Crowder, you know, of course, why we are here, that after you filed your application for facilities which are now known as WXXL, a petition to deny that application was filed by WHBT, you know that, don't you? A. Sure.

Q. And you filed an opposition to WHBT's pleading, did you not?

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A. That is right.

Q. I have here in my hand the Commission's docket, and I am referring to opposition to petition to deny filed by Folkways Broadcasting Company, "Filed by F.L.Crowder, trading as Harriman Broadcasting Company"? A. That is right.

Q. I direct your attention to Attachment No. 13 of that petition or of that opposition, that pleading. On Attachment 13, excuse me, Attachment 13 is headed, "Harriman Broadcasting Company, Station WHBT Profit and Loss Statement, 1955."

I am directing your attention to the lower portion of that attachment and to the item in the balance sheet labeled, "Transfer of Land to WDEH, $2,000." What land was it? A. That is the land where the studio and tower is located.

Q. That studio and tower, whose studio and tower? A. WDEH.

Q. There is another one, note of WDEH, $7,462.07. What is involved in that item? I know it is a note but what underlays that note? A. I have to check the records. I don't remember.

Q. Would you check your records? A. My accountant can check the record.

Q. And give us the information? A. Yes.

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Q. When was the land transferred to WDEH? A. I have to check the records. I don't know. I suppose it is sometime in 1955 according to that statement?

Q. In operating WDEH as Harriman Broadcasting Company, not a corporation, but trading as Harriman Broadcasting Company, was it you as an individual or you and Mrs. Crowder as a partnership? A. Individual.

Q. How about WHBT? A. Same. The best I remember.

Q. Again, referring to your opposition which you filed on WHBT's petition to deny I direct your attention to Attachment 12, thereof, statement of income and expense under category of disbursement, see item for land WDEH, $2,000. Is that right? A. Yes, $2,000.

Q. This is a statement of income and expense for calendar year 1955? A. Yes, sir.

Q. So that means the land required for WDEH during that year according to—that is what you wanted to present by that? A. I won't say that. WHBT could have paid for the land before it was ever filed for CP, for that matter.

Q. Take a time and take a look at it. I am telling you because I looked at it and that is why I am asking questions.

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Statement of Income and Expense, the opening item is Balance on Hand, 1-1-55, January 1, 1955, and there are items thereunder, and in looking at it I would presume the items of disbursement therein listed occuring during and were made in the year 1955? A. Yes, sir, I would think so.

Q. That is what this is designed to say, is it not? A. Yes.

Q. So then this item "Land for Station WDEH, $2,000," was a transaction occurring in 1955? A. Not a transaction, I won't think it is a transaction.

Q. Well, what is it. A. I will check with my accountant. I remember purchasing the land, I paid for it with a personal check, 1954, I guess it was.

Q. Then what did you do? A. I guess this here is for the station paying me back, I would think this $2,000 here this is WHBT refunding the $2,000 I paid personally.

Q. You were the individual owner of WHBT, weren't you? A. Yes.

Q. And you were the individual owner of WDEH? A. That is right.

Q. If that is so, how can the station pay you back, you were dealing with yourself, were you not? A. Yes, I guess you can call it that, yes. You have to

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keep a record of that $2,000 someplace.

Q. Well, if I bought– A. That is as far as the business is concerned.

Q. How did you pay for it, by check? A. Pay for what?

Q. Land, when you say you bought it in '54. A. Personal check. Not WHBT. A personal check.

Q. Now, the opposition pleading to which I made reference, a copy I show you, and this is a duplicate copy, you can see this? A. Right.

Q. The duplicate copy contains an affidavit and the conformed copy in the duplicate files indicates it was executed in January–January 3, 1963, by F. L. Crowder.

Do you agree you made and gave to the Commission an origianl affidavit that the duplicate copy suggests it was made? A. That is right.

Q. You recall making such an affidavit? A. Yes, sir.

Q. Directing your attention to paragraph number 3 of that affidavit which says, "That I have read the information contained in the foregoing opposition to petition to deny, and that the information contained therein is true and correct to the best of my knowledge and belief, and that where indicated the information is based on my own knowledge and experience in radio

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broadcasting in the Harriman, Tennessee market." A. Right.

Q. That is the statement in your affidavit? A. Right.

Q. So the record may reflect, and if you want to agree with me or you can ask the witness to agree, that your affidavit is the penultimate page of that petition to which we made reference, that is the opposition and attachment, it follows all the attachments and is followed only by the pleading of your counsel and certification of service?

MR. BILGER: What is the date?

MR. KENKEL: January 3, 1963, the witness has read it.

BY MR. KENKEL:

Q. You are going to find out what is involved in the note of WDEH? A. No, what note?

Q. The note that we earlier talked about, sir; on Attachment 3 of the opposition pleading and the item is in the balance sheet.

MR. BILGER: Mr. Examiner, I think those questions, well, I will wait until he finishes and then I want to say something.

PRESIDING EXAMINER: What is the question?

MR. KENKEL: If there is a pending question, I will strike it.

MR. BILGER: I was going to suggest improper procedure. If

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counsel wants some documents it can be addressed to counsel, not to my clients.

PRESIDING EXAMINER: Will you show the document to counsel, Mr. Kenkel, please?

MR. KENKEL: Yes.

MR. BILGER: In response to this question I know what he asked for, he asked to have our recollection of a note or whatever we had on a note and he wanted to know of the land transaction. If we have those in the record, we shall examine it, and if we have it we will produce it.

BY MR. KENKEL:

Q. Again, while we are on it, the same balance sheet, that is December 31, 1955, this was–it appears as Attachment 13. This was for WHBT when you owned it as an individual, is that correct. A. That is correct.

Q. For calendar year '55? A. That is correct.

Q. There is an item on there "Land, $450." How was that owned? A. That is where the ground system is located, that is what it cost when we purchased it in 1946.

Q. Well, in 1946 who purchased it? A. The corporation.

Q. It was then the corporation?

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A. Right.

Q. And you assigned the license from the corporation to yourself as an individual in '54? A. Yes.

MR. BILGER: I can't hear either the question or answer frequently. They are standing very close together and it seems to be a private conversation.

THE WITNESS: All of the assets were transferred to me in 1950 when I purchased it when I purchased the corporation.

BY MR. KENKEL:

Q. Well, when you purchased the corporation's stock in 1950, you are saying all of the assets were then transferred to you in your individual capacity, is that right? A. Correct.

Q. In addition to acquiring the stock you also acquired the assets in your individual capacity? A. Correct.

PRESIDING EXAMINER: Sir, are we getting those facts straight then? As I gathered it, there was originally, in 1950, a purchase of the stock and in 1954 that corporation was dissolved and then I would imagine that the assets were transferred to Mr. Crowder individually, but I don't know, the facts may be

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otherwise. If it is important to get the facts on the record accurately. Let's get them.

In 1950, when you bought the stock, all of the stock of the corporation, did you also take title to the assets of the corporation, that is, if there was land in the name of the corporation, was there a deed made from the corporation to you individually?

THE WITNESS: No. It was corporation—it was the corporation until 1954.

PRESIDING EXAMINER: Until 1954. All right, that is what I wanted straight.

BY MR. KENKEL:

Q. In 1954, you acquired— A. In 1954, I surrendered the charter to the State of Tennessee.

Q. All right, that is step one or part one of the transaction. Part two, you acquired title to the assets as an individual? A. I would have to check the records.

Q. Excuse me, let me finish, please. You acquired title to the assets in your individual capacity that year? A. I suppose, I don't remember. I am sure I did, though. I say it is hard to remember 13 years ago. It is for me.

Q. You bought a lot of radio stations, were involved in a lot of transactions in 13 years?

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A. That is–

MR. BILGER: I object.

PRESIDING EXAMINER: Objection sustained, yes.

MR. KENKEL: I must except to your ruling. The witness answered and it is a perfectly proper question.

PRESIDING EXAMINER: No, you said a lot of radio stations were involved, and I think it is an improper question, and I am striking the question and sustaining the objection.

MR. KENKEL: I must respectfully except to your ruling.

PRESIDING EXAMINER: There is an automatic exception to every unfavorable ruling. There need not be an expression of it.

BY MR. KENKEL:

Q. Before you told us that the land for WDEH, you paid for personally, so, therefore, you subsequently made some sort of a transfer to get it out of yourself personally to WDEH, is that correct? A. It must be.

Q. Now, the transfer of land from WHBT when the corporation was dissolved, did it come to you personally or as WHBT? A. That I don't remember. I happen to have an attorney and accountant to keep up with that. I can't keep up with all of it.

Q. Now, turning to WHBT, you sold that station in 1956? A. Yes, sir. I believe it was the month of June.

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Q. And you sold it to Folkways Broadcasting Company, Inc.? A. That is right.

Q. Now, I am showing you, Mr. Crowder, a file from the Commission's files labeled, "WHBT No. 2," and I am further directing your attention to an assignment application, FCC Form 314, bearing file number BAL-2321, received, stamped received in Commission's Offices in May, May 10, 1956.

On page 2, thereof, it is indicated as executed April 21, 1956, F.L. Crowder, trading as Harriman Broadcasting Company. There is a signature appearing there, is that yours? A. It is.

Q. And the contract of sale in that application labeled three to which I direct your attention bears a date of April 13, 1956, is that correct? A. Right.

Q. So that was the date you entered into the contract for that sale? A. Correct.

Q. Now, you had WHBT on that market, for sale, prior to time you entered into the contract with Folkways Broadcasting Company, Inc., didn't you? A. Yes, sir.

Q. The contract, the sale price, do you recall it? A. Approximately $80,000.

Q. That was the price you finally agreed at?

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A. That is right.

Q. Directing your attention to page 1 of the application BAL-2321, paragraph number 3, thereof, where the question is "Give a full statement of assignor's reasons or purpose for requesting assignment," and it states therein, does it not, "Assignor desires to withdraw from the broadcasting business in Harriman at this time and believes assignee will bring a broadcast service to the public, strike that, broadcast service to the Harriman community that will be in the public interest"? A. Correct.

PRESIDING EXAMINER: I might say that is a very unrevealing answer but it is implicit in the application, obviously if a person wants to assign he is also withdrawing from service. And I am surprised at the Commission, if it was necessary, it didn't ask for anything additional, I suppose that is all that is required, I don't know.

BY MR. KENKEL:

Q. Would you look through the application, sir, and tell me if there is any further response to you in the application with respect to the reasons or purposes for the sale beyond that language which I have just quoted? A. No, sir.

Q. There is not. Thank you.

Now, turning to Exhibit No. 1 of that application, there

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is a schedule labeled, "Original Cost of WHBT"? A. Right.

Q. And there are three columns of figures on the schedule, the first one being also labeled "Original Cost," and the total there is $53,102.70? A. Correct.

Q. The second column, present value, which is it value as of the sale, is that correct? A. That is correct.

Q. That total is $18,649.52? A. Correct.

Q. Do you recall when the sale was consummated? A. You mean the date?

Q. The date, yes. A. No, I don't. It was sometime in June, the best I remember.

Q. The commission's files contain a letter from the then attorney for Folkways, which indicates that the consummation, or the effective date of the transaction was July 1, 1956, would you agree with that? A. July 1, that is right.

Q. Now, in connection with that sale, you sold WHBT, you sold it for $80,000, you took back a purchase money note, secured by a real property mortgage and a chattel mortgage? A. A note for $70,000.

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Q. What was the security increments, what were the security increments, that is, it was secured by a real property mortgage, and a deed of trust I supposed you use in Tennessee? A. And by the personal signature of Mr. Ernest Tubbs and Hank Snow.

Q. At the time of the purchase, Folkways Broadcasting Company, Inc., was a corporation owned by Hank Snow, Ernest Tubbs, and William McDaniels? A. Right. Correct.

Q. You own and operate a billiard parlor in Harriman, don't you? A. That is correct.

Q. What is it known as? A. Harriman Billiard Parlor.

Q. How long have you owned and operated it? A. 1944. I believe it is 1944.

Q. Is that individually owned or operated by you and your wife? A. It is owned by myself and partner, Mr. Charles Derrick.

Q. Spell that last name? A. D-e-r-r-i-c-k.

Q. How long has the partnership owned it? A. Well,–

MR. BILGER: Mr. Examiner, I am going to object to this line of questioning. I was waiting to see how it fitted into the

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traffic issue or economic issue and I don't see connection, therefore, it is irrelevant.

MR. KENKEL: May we approach the Bench?

PRESIDING EXAMINER: Yes, I see some connection, but if you care to, let's have a little conference on that.

(Discussion off the record.)

PRESIDING EXAMINER: Back on the record.

Yes, the objection is overruled.

BY MR. KENKEL:

Q. If you don't remember the question, I will ask the reporter to re-read it.

MR. BILGER: I don't remember it; I would like it re-read.

(The pending question was read by the reporter.)

PRESIDING EXAMINER: That is the billiard parlor.

THE WITNESS: I would say probably since 1948.

BY MR. KENKEL:

Q. You and Mr. Derrick had been in partnership as owners of the Harriman Billiard Parlor? A. I believe that is correct.

Q. Was there a written partnership agreement between you? A. No, sir.

Q. This was oral? A. Right.

Q. Where does Mr. Derrick live? A. In Harriman.

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Q. While we are at it, I will go back, if I may, to WDEH, and ask you the same question I did about the WHBT sale, as to the responses in paragraph 3, and working backwards, BAL-2399, and take your time because we are shifting gears, BAL-2399 was the sale which was consummated, that is to Arthur Smith, Inc., WDEH, Inc., and will you take a look in that application and tell me, sir, whether there is any response other than that appearing in paragraph 3 as to the reasons or purposes for the assignor's sale? A. No.

Q. Mr. Crowder, I show you a Commission file labeled, "WLIV" No. 1, and I am asking you, you and your brother-in-law, R. H. McCoin, formerly owned and operated WLIV in Livingston, Tennessee? A. Correct.

Q. It operated on 90 kilocycles, 1 kilowatt, daytime? A. Right.

Q. I am showing you application labeled BP-10326, and I am directing your attention, I will give you a chance to look at it, directing your attention to page 2, thereof, and ask you if that is your signature? A. That is my signature.

Q. F. L. Crowder and R. H. McCoin doing business as Audio Broadcasters? A. Correct.

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Q. Signed by you on January 20, 1956? A. Right.

Q. Directing your attention to No. 1, written partnership agreement between you and R. H. McCoin? A. Correct.

Q. It indicates F. L. Crowder will put in, will contribute capital of $7,500 and R. H. McCoin will contribute capital of $7,500? A. Correct.

Q. Directing your attention to Section 4 of that application, paragraph number 12, where the form states applicant's general plan for staffing the station including the number of employees in each department? A. Right.

Q. Under–strike "under". There is an item, is there not, "Administrative General Manager, F. L. Crowder, Harriman, Tennessee"? A. Correct.

Q. Going back to page 2 of that application, it shows, does it not– A. Well, the application was under my direction if that is what you mean?

Q. Right. You agree it was prepared under your direction? A. Right.

Q. Now, would you take a moment to go through it, sir,

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before I ask you this question. Do you agree, sir, there is nothing in this application of January, 1956, to indicate other than you will be the general manager as stated in paragraph 12 of Section IV, Roman numeral 4, by the way? A. That is true.

Q. When was the WLIV construction permit granted? A. Sometime in '56, I don't remember.

Q. Would you agree it was granted May 3rd, 1956, according to the copy of this matter in the Commission's files? A. Correct.

Q. Thereafter, an application for modification of the construction permit was filed, was it not, executed on August 17, 1956, and received in the Commission's offices and August 20, 1956, application, and I am directing your attention to application file BMP-7341? A. That is my signature.

Q. Now, I am directing your attention, sir, to paragraph 2, on page 1, which is indicating that material here with the box checked and also entry "BP-10326"? A. That is right.

Q. Is it true that the only material from the construction permit, original construction permit, that the application desires to change is that box Roman numeral V with a check and the responses to the other section? A. That is right.

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Q. Including Section, Roman numeral IV, is BP-10326. Do you see it? Is that right? A. That is right.

Q. Has there been any substantial change in the information incorporated in this application by reference in this paragraph? A. What is the date?

Q. This is checked "No", is it not? A. Right.

Q. The date being August 17, 1956? A. Right.

Q. I am directing your attention to the application for license of WLIV, "File No. BL-6402," indicated as received by Commission November 15, 1956. This was the application for license of WLIV, was it not? A. Signed by R. H. McCoin.

Q. Would you take a moment and go through there and tell me if there is any—because I am suggesting to you there is nothing in there to indicate that F. L. Crowder is not the general manager of the station is that correct, nothing specifically in there? A. No; no, sir.

Q. Now, pursuant to the filing of this application, the Commission granted WLIV Test Program Authority, did it not? A. Correct.

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Q. And it is dated November 26, 1956? A. Correct.

Q. And that is when WLIV started? A. I guess that is approximately the date. I don't know.

Q. Well, don't agree with me–if I am moving too fast, don't agree with me. A. I can't remember those dates. I guess it is the date. I don't remember.

Q. Well, what I am showing you–I am sorry, November 26, 1956, is the grant of the license. I misspoke myself. A. I guess that is right. I thought you said when you started the station.

I did say that and I misspoke myself. I am sorry.

Q. Did you recall when you went on program tests? A. No, sir.

Q. I am showing you a copy of the Commission's letter of November 16th, is that when you got the authorization for program tests? A. As far as I know. I didn't get it, my brother-in-law got it.

Q. Now, in connection with WLIV, there was an application filed for renewal of license in 1958, wasn't there? You know Tennessee stations have a three-year renewal? A. I know Tennessee stations are like all other states, three years.

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Q. And for Tennessee stations the new license date is August 1? A. Correct.

Q. So that the application was filed in May preceding the August 1 expiration date? A. Yes.

PRESIDING EXAMINER: The answer is "Yes." Mr. Crowder, you filed it in May?

THE WITNESS: Yes.

BY MR. KENKEL:

Q. If I may, Mr. Examiner, if Mr. Bilger and Mr. Letterman will look on with me I propose to recite for the record what the file shows and ask you then to take official notice of it. The file shows an application for renewal of license of Station WLIV bearing file number BR-3365, stamped in the Commission's office, Office of the Secretary, on May 5, 1958, and in paragraph 7 of the application form it calls for a list of other businesses in which the applicant or any officer or director or principal stockholder, and I am not quoting, I am paraphrasing, because we all have the language of the application form, having a 25 per cent or more interest.

There is entry, "F. L. Crowder, 7-Up Bottling Company, Livingston, Tennessee; F. L. Crowder, Harriman Billiard Parlor, Harriman, Tennessee."

Section IV, page 3, paragraph 12, with a question: "State

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the Applicant's general plan for staffing in the station," and there is the entry "General Manager, F. L. Crowder, Harriman, Tennessee," "Station Manager, R. H. McCoin," and other entries.

I am only asking for official notice of these entries that I have directed your attention.

May we agree that the application shows that, and ask the Examiner to take official notice thereof?

THE WITNESS: Who signed the application?

MR. KENKEL: To complete it, application is signed by R. H. McCoin, partner-station manager.

PRESIDING EXAMINER: All right. I will take official notice of the document.

BY MR. KENKEL:

Q. May I direct my brother's attention to the license renewal, or rather application for renewal of license of WLIV stamped as received in the Commission's Secretary's office on May 2, 1961. The application bears the same file number, BR-3365, and it is shown as executed on April 11, 1961, executed by R. H. McCoin "partner-station manager." and I am directing your attention to Section IV, page 3, paragraph 12, and there is the entry "General Manager, F. L. Crowder, Harriman, Tennessee," and "Station Manager, R. H. McCoin, Livingston, Tennessee," and may we have it agreed that the application shows those entries and ask the Examiner to take official notice thereof.

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MR. LETTERMAN: They do show these entries, but in this instance he did not give the in paragraph 7 as he did with respect to the earlier application. Do you want to do it?

MR. KENKEL: Yes, Paragraph 7 on page 1, "F. L. Crowder, 7-Up Bottling Company, Livingston, Tennessee," and "F. L. Crowder, Harriman Billiard Parlor, Harriman, Tennessee."

PRESIDING EXAMINER: All right, official notice will be taken of those items.

BY MR. KENKEL:

Q. So, WLIV commenced operation in November, 1956, is that correct? A. Correct.

Q. We are agreed that the Commission granted program test authority on November 16, 1956? A. Correct.

Q. Did you propose to sell the station in '57 and '58? A. No, sir.

Q. Did you have any discussions with Mr. Marshall concerning the sale? A. No, sir.

PRESIDING EXAMINER: The answer to the question is—Mr. Kenkle, did you have discussions with Mr. Marshall?

MR. KENKEL: If the reporter got that much—

PRESIDING EXAMINER: All right. Is there another question? Let's get it, did you have discussions with Mr. Marshall

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in '57 or '58?

THE WITNESS: The only discussion I had with—

PRESIDING EXAMINER: Wait, Mr. Crowder, wait until the question is completed.

MR. BILGER: Just wait until he does finish and then answer.

PRESIDING EXAMINER: Now, the question is, did you have discussions with Mr. Marshall in '57 and '58 about the sale of the station?

THE WITNESS: The only discussion I had with Mr. Marshall, he called me in Atlanta, not Atlanta, but somewhere in Georgia, some town, I have forgotten, and I said there was a discussion with my brother-in-law on the sale of the station. That is the only discussion I had with him. I don't know who his client, his prospective client was or nothing about it.

BY MR. KENKEL:

Q. You did have a discussion with him then? A. Well, not as far as I was conerned on selling the station. No, I didn't want to sell the station. I didn't want to sell my share of the station.

Q. You subsequently did sell your share of the station, did you not? A. Yes, sir, I did. Do you want to know the reason?

Q. Wait.

MR. BILGER: Wait, Mr. Crowder. I will get a chance with

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you.

BY MR. KENKEL:

Q. Do you know Mr. Paul Crowder of the Chapman Company? A. I met the gentleman.

Q. The name is the same, but he is no relationship of yours, is he? A. No relationship.

Q. Was the Chapman Company the broker that finally handled the sale of your interest in WLIV? A. I didn't use a broker as far as I know.

Q. Did you have a discussion with Mr. Chapman concerning the sale of WLIV or your interest in it? A. I did not.

Q. In '61? A. I did not.

Q. You never talked to Mr. Crowder? A. No, sir. You said "Chapman".

Q. The Chapman Company, I am talking about Mr. Paul Crowder. A. He came out to my bottling plant and said he was discussing the sale of it with Mr. McCoin.

Q. You did have a discussion with him about it? A. If you call that a discussion, yes. He was giving me information.

Q. That was 1961?

A. I don't remember.

Q. You don't remember when it was? A. No, sir.

Q. You subsequently did sell your interest in WLIV, did you not? A. Yes, sir, to my brother-in-law.

Q. Now, I am directing your attention to an application bearing File No. BAP-5077, stamped, "Received in the Commission's office on April 14, 1964," is that the application under which you sold your interest to the brother-in-law? If you want to take a moment, just answer "Yes" or "No." A. I would say "Yes."

Q. Now, at the time you sold your interest to your brother-in-law, you gave him an agreement not to compete, did you not? A. That is right.

Q. Now, I am directing your attention to an instrument labeled, "Agreement not to compete," and it appears to be a photocopy that is signed by F. L. Crowder, dated, March 31, 1964? A. Right.

Q. I am directing your attention to this language and I don't know if it is stricken over but I will say it has markings over it and the language reads, "And for the further consideration and in order to induce the said R. H. McCoin to purchase my interest in the above-referred to enterprise."

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Do you see this language, sir? A. Yes, I see it but—

Q. Now, just answer my questions, please? Now, looking at the instrument, are there any initials in the margin anyplace in the instrument? A. No, sir.

Q. So, when you sold your interest to your brother-in-law, what was the sale price, $50,000? A. Right.

Q. Now, there was an application for renewal—strike that, please, There was an application for renewal of license WLIV, BR-3665, filed April 28, 1964, was there not? A. Right.

Q. Signed by R. H. McCoin, partner, station manager. A. Correct.

Q. In that renewal application, is a balance sheet as of April 1, 1964, for Audio Broadcasters? A. I know nothing about it. My brother-in-law handled it.

Q. Do you agree that the file contains such a balance sheet? A. Yes.

Q. Taking a look at—well, is this the first time you saw the balance sheet? A. That is right. That is correct.

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Q. May we ask official notice be taken of the balance sheet, Exhibit 1 in BR-365, filed April 28, 1964, and I would like to have official notice taken of the net worth of Audio Broadcasters, which was?

Parenthetically, Audio Broadcasters was the partnership of you and McCoin, the licensee, WLIV, was it not? A. It was until I sold my share. It is still Audio Broadcasters.

Q. And that the net worth as of April 1, 1964, was $33,309.20.

PRESIDING EXAMINER: The net worth of what, Audio Broadcasters?

MR. KENKEL: Audio Broadcasters as of April 1, 1964.

MR. BILGER: I would have to see that. I have not seen it yet.

MR. KENKEL: All right.

MR. BILGER: I will agree to that, Mr. Examiner, without objection, provided the whole balance sheet is put in. It has an appreciation figure, for example. He wants net worth only.

PRESIDING EXAMINER: Official notice is taken of the entire document.

MR. BILGER: Will we be supplied copies? We don't have a date here but a balance sheet which we will find in the first instance.

PRESIDING EXAMINER: Of course, I don't have a copy of it

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either. Is it possible to get copies of that? For the information of the parties, it is not an exhibit.

MR. KENKEL: I don't think it is necessary to make it an exhibit.

PRESIDING EXAMINER: I don't think so either except, as I said, if it is going to be used as a proposed finding, then the information should be supplied to everyone because it is very difficult to get ahold of those documents since everybody is going to be working on these matters at the same time.

MR. LETTERMAN: I think there is a rule of procedure if a party desires to have official notice taken of any document that is contained in the files of the Commission there should be a ground rule that that party supply a copy of it to the Examiner and other parties, because if he does not we will find ourselves in a terrible morass at the end of the hearing without having available to us some ready means for those items to which he is making reference.

PRESIDING EXAMINER: I realize that and that is why I am saying this. It is not an exhibit, so there is no requirement that you supply these copies for the record as such. You spoke about a ground rule. I am in favor of that ground rule. Can it be done?

MR. LETTERMAN: Of course, it can be done.

PRESIDING EXAMINER: All right, let's have it done. Let's get copies made. But the document is—it is in his custody

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right now, but not really in his possession.

MR. LETTERMAN: He can have it copied as easily as anybody else.

PRESIDING EXAMINER: Can he take it out of the building?

MR. LETTERMAN: He can have it taken out.

MR. BILGER: At a quarter a page in the public reference room, he can Xerox it up there.

PRESIDING EXAMINER: All right, let's have copies supplied to the parties.

BY MR. KENKEL:

Q. Just to keep our dates in order while we are speaking of them, the sale of your interest to your brother-in-law, Mr. McCoin, was approved by the Commission on May 11, 1964? A. I suppose that is correct.

Q. There is a copy of a wire in the files that indicates that the acts were completed consummating the assignment on May 29, 1964, is that right? A. I don't know. He handled all of this. That is the first time I have ever seen it.

Q. Obviously, it is the first time you have seen the wire? A. That is correct.

Q. That is addressed to the Commission.

MR. LETTERMAN: May I have a point of clarification?

PRESIDING EXAMINER: Certainly.

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MR. LETTERMAN: He is speaking of the sale of his interest. Could we identify what the extent of his interest was in the partnership so we would have it more definitively.

PRESIDING EXAMINER: I thought he already said it was a 50 per cent interest, is that right, Mr. Crowder?

THE WITNESS: That is correct?

BY MR. KENKEL:

Q. You were a 50 per cent owner? A. Correct.

Q. Now, subsequently,–if I can have a minute, Mr. Examiner, I can shorten this up–in 1965, WLIV was sold, was it not? A. That is what I understand, yes.

Q. Well, you participated in some respects in that transaction, did you not? A. 1965?

Q. 1965, yes. A. None whatsoever.

Q. I am going to show you a copy in the Commission's files of a lease contract and agreement made between R. J. Long and his wife, Eletta W. Long, and R. H. McCoin and F. L. Crowder, dated–strike that–let me have a minute–dated–this is 1956– A. I said 1965.

Q. No, 1956, I am going to ask, I understand it was

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assigned to WLIV and I am going to ask, Did you participate in the assignment of the lease agreement contract in '56? A. I am inclined to doubt it. I don't remember if I did.

Q. You took no part then in the sale from R. H. MCoin to WLIV Inc., in 1965? A. No, I didn't.

PRESIDING EXAMINER: The answer is you did not?

THE WITNESS: I sold my share? 1964. Why should I?

PRESIDING EXAMINER: All right, that is the answer.

BY MR. KENKEL:

Q. In this hearing, Mr. Crowder, your attorney stated that he speaks for you. I don't want to mischaracterize his testimony, so I will show you Transcript, page 113, and I am directing your attention to lines 15 and 16, thereof, which says, and Mr. Bilger is speaking, "I will do no such thing, I represent Mr. Crowder and when I speak, he speaks, period."

Take a look at it. So when Mr. Bilger—you don't quarrel with that statement—strike that.

PRESIDING EXAMINER: One second, please. Mr. Bilger, did you want to say something?

MR. BILGER: He asked it be stricken.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. You don't quarrel with that statement, Mr. Crowder, that when Mr. Bilger speaks here he is speaking for you?

MR. BILGER: I object.

PRESIDING EXAMINER: The objection is sustained. There must be specific incidents named. We just can't have some general statement regarding that. This is directed to a general, I mean a specific incident, Mr. Kenkel, when Mr. Bilger made that statement. And we can't extend that or project that to cover the waterfront.

BY MR. KENKEL:

Q. Mr. Crowder, in the applications to which I directed questions, we see references to paragraph 7, particularly of renewal applications to F. L. Crowder, other business interests, 7-Up Bottling Plant, Livingston, Tennessee, and what is your present interest in the 7-Up Bottling plant? A. Sole owner.

Q. How long have you been sole owner of it? A. Since 1956.

Q. And on what date in 1956 did you acquire the bottling plant? A. I have to check my records. I don't know. Except, I believe, still in September.

Q. September of 1956? A. That is right.

Q. How was your business known? Did you call it—what style do you go under in the 7-Up Bottling Plant? A. That is the business, 7-Up Bottling Plant.

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Q. You bottle 7-Up drinks? A. Naturally, along with others.

Q. What other drinks? A. Dr. Pepper, for instance, Nu-Grape.

Q. Is that one word hyphenated, Nu-Grape? A. Right.

Q. You bought that in September, 1956? A. Right.

Q. And you owned and operated it since then? A. Correct.

Q. So it is a pretty big operation, you have added to it and built it up? A. It has grown, it profited since I have had it.

Q. You distribute and sell the drinks throughout the country, Livingston? A. Yes.

Q. What county is that? A. Overton County.

Q. Your franchise area extends beyond Overton? A. Right.

Q. What other counties are encompassed? A. There are 15, and I don't think you could recall all, I could give you some.

Q. 15 counties? A. Yes.

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Q. All in Tennessee? A. No. Three, I believe, are in Kentucky.

Q. Now, I am not going to take much time, but very briefly, except for the size of the business, how many trucks do you have? A. We operated seven trucks in the summer months and five in the winter months.

Q. How many employees are there? A. Approximately 15.

Q. Now, do you have a franchise for 7-Up? A. Yes.

Q. And have you a franchise for Dr. Pepper? A. I have a franchise for all of my products.

Q. Are they separately acquired or different— A. Different, of course. They are different parent companies.

Q. Mr. Crowder, you filed an application for an FM station in Harriman, have you not? A. Right.

Q. In that connection you filed a balance sheet, dated June 30, 1966? A. Correct.

Q. Which is Exhibit 1. I see there an entry "Dr. Pepper Franchise $112,000? A. That is right.

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Q. Does it include 7-Up? A. No. There is another bottling plant, they were interested in bottling Dr. Pepper and I purchased the franchise from him.

Q. I see an item there "building and plant equipment, $239,599.13." Is that the value you placed on your bottling plant in Livingston? A. Right.

Q. So it is a pretty good sized operation? A. Well, I am happy with it, if that is what you mean.

Q. You feel you made it grow and made a success out of it? A. That is right.

Q. Mr. Crowder, do you recall reading the Commission's memorandum, opinion and order of January, I think it is January 3rd, released January 14, 1966, in which the Commission denied WHBT's petition to deny and granted your application for WXXL. A. What was the question?

Q. Will you read the question, please?

(The pending question was read by the reporter.)

THE WITNESS: I do.

BY MR. KENKEL:

Q. Directing your attention to paragraph 6, thereof, the Commission's language, the Commission is talking about F. L. Crowder, individual applicant.

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At present, he is owner of a business in Harriman and resides in Livingston, Tennessee, which is some 50 miles away— A. That statement is incorrect. I reside in Harriman and have lived in Harriman for 35 years.

Q. Did you ever tell the Commission— A. 32 years, I beg pardon.

Q. Did you ever tell the Commission this is wrong?

MR. BILGER: Objection.

PRESIDING EXAMINER: Objection sustained.

MR. KENKEL: I think it is perfectly proper.

PRESIDING EXAMINER: No, if I told the Commission every time the Commission was wrong, I would be continually bombarding the Commission.

MR. KENKEL: This is why we are here.

PRESIDING EXAMINER: I realize that, but the fact the Commission makes a statement and it is in a public document doesn't mean the person has a duty to tell the Commission that it is wrong.

BY MR. KENKEL:

Q. You recall, don't you, Mr. Crowder, that the Commission sent you a letter under date of December 17, 1965, in connection with your application for Harriman? A. I don't remember the date. If you read the letter I might recall.

Q. According to the file in the dockets, or the copy of

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the letter in dockets, the letter said, "In your oppostion you state, inter alia, that you sold two radio interests in 1956 because of ill health, however, our records indicate that at about the same time you were party to an application for a construction permit for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50 per cent partner and proposed general manager.

"In view of the apparent inconsistency between the statement referred to above and the representation contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this matter."

Do you recall the Commission writing you that letter? A. I do.

Q. Now the reference which the Commission made in this December letter was to your opposition pleading filed in WHBT's petition to deny.

I will direct your attention to page 12, thereof, and paragraph number 20, which contains the statement, "Crowder was forced to sell his radio interest due to ill health." Do you see that? A. Right.

Q. Now, this opposition was filed with the Commission on, as indicated as having been filed January 8, 1963, and your

affidavit, which I directed your attention to earlier concerning the statements in this opposition, dated January 3, 1963– A. Yes.

Q. Now, prior to January 3, 1964, when you made the affidavit concerning this statement you were forced to sell the station because of ill health, you never told the Commission you had ill health and that was the reason you had to sell the station? A. No, I didn't tell the Commission.

PRESIDING EXAMINER: Now, let me just ask about that. When I asked previously about an answer to the application form, the Court refers to this and says that, it says on page 5 of the opinion, "However, when he applied for, applied for Commission approval, that is Mr. Crowder, of the two sales in 1956, he failed to give this reason, that is, ill health, in parenthesis or brackets, although the Commission, or they the Commission asked for a fuller statement of his reasons.

Was there anything in 1956 that the Commission asked for a fuller statement of reasons?

MR. KENKEL: I believe so, and I am going to find that at the recess. I don't want to take the time now.

PRESIDING EXAMINER: I see. All right. I just wanted to bring that up. Is there any reason why we should not recess now until two o'clock or does anybody have any other time?

Let us recess, then, until two o'clock.

(Whereupon, at 12:30 p.m., the hearing recessed, to reconvene at 2:00 p.m., the same day.)

AFTERNOON SESSION

2:00 p.m.

PRESIDING EXAMINER: Let us go on the record.

MR. LETTERMAN: Your Honor, I have a preliminary matter I would like to take up at this time. It is with reference to the engineering showing. In connection with WHBT, the Bureau information indicates it receives no interference to its normally protected contour, therefore, the 0.5 milivolt per meter contour of WHBT would remain basically the same as shown on Broadcast Bureau's Exhibit 1 and in WHBT's exhibit itself, with respect to the interference free service to the station.

With respect to WXXL, what the Broadcast Bureau proposes to do is to take the information set out in the application for the facilities for WXXL, showing interference to the northwest, some to the southeast and southwest, little bits of interference, have that duplicated and submit it in the record.

Now, what we would like to have is, first of all, a stipulation from the parties that the interference, that there would be no interference with WHBT and also agreement from the parties that the procedure which we have outlined is acceptable to them subject to having their engineers check it out.

Is that agreeable?

MR. KENKEL: It is to Folkways.

MR. BILGER: And to Mr. Crowder.

PRESIDING EXAMINER: All right.

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May Mr. Crowder then resume the stand?

Whereupon,

FREEMAN L. CROWDER (Recalled)

* * *

DIRECT EXAMINATION (Continued)

BY MR. KENKEL:

Q. Mr. Crowder, I am now using again Commission's License File WHBT-2, and I am directing your attention to letter dated, or a copy of a letter dated May 18, 1956, bearing Commission reference number 8430, addressed to Mr. F. L. Crowder, trading as Harriman Broadcasting Company, Radio Station WHBT, Harriman, Tennessee. I am particularly directing your attention to paragraph 3 of that letter, and when I finish my question I will let you see the letter, "Your attention is directed to section 310 of the Communications Act of 1934 as amended, which precludes the grant of an application for assignment of a broadcast facility except on finding by the Commission that the public interest, convenience, and necessity will be served thereby.

The reasons given for the assignment are among the several determinative factors the Commission finds essential to consider before it can justifiably reach such a finding required by the Act. You are, therefore, requested to

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elaborate more fully on the reasons of the assignee for requesting this assignment.

Would you take a look at that letter, sir? Now, did you receive a copy of that letter? A. I don't remember it, but I am sure I did.

Q. Do you recall whether or not you filed any response thereto? A. No, sir, I don't.

Q. Would you– A. I am sure we did or there won't have been a sale. I don't recall.

Q. I have looked through here and don't find any response by you to it. But you don't independently recall any response? A. No.

MR. BILGER: Why file?

MR. KENKEL: WHBT No. 2.

May I have this instrument marked for identification as WHBT No. 3, please?

(The document referred to was marked for identification as WHBT No. 2)

MR. KENKEL: What I am having marked for identification is a deed, a certified copy of a deed dated December 31, 1956, from Lloyd Lee and his wife, Mildred Lee, to F. L. Crowder and his wife, Tommie Crowder.

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MR. LETTERMAN: Do you have copies?

MR. KENKEL: I do not. I will provide copies later.

BY MR. KENKEL:

Q. Mr. Crowder, I show you what has been marked for identification as WHBT No. 3 and ask you is that not a copy of the deed for the 14 lots and the residence you purchased from Mr. and Mrs. Lee in Livingston, Tennessee, in December, 1956? A. Sure, I purchased the property.

Q. You did purchase the property, 14 lots, which was on East Main Street? A. I don't remember the number of lots but I purchased the property on East Main Street.

Q. It was otherwise known as 1103 East Main Street? A. As far as I know.

Q. At the corner of Keeton Street? A. Yes.

MR. KENKEL: Now, I would like to have marked for identification as WHBT Exhibit 4-A and 4-B, two photographs, and 4-A being a photograph of a house and to distinguish it from 4-B, 4-A has a stop-sign visible and 4-B does not.

(The documents referred to were marked for identification as WHBT Exhibits 4-A and 4-B.)

MR. LETTERMAN: May I inquire, do you intend to have both of those sheets eventually go into evidence, the photograph

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as well as the sheet to which it is attached or just the photograph?

MR. KENKEL: I would say just the photograph, so maybe we better mark both of those, I don't know whether it is easier to handle it that way.

MR. LETTERMAN: My only point is there is some writing on the page itself, Your Honor.

MR. KENKEL: Let's do this. Why don't we just use the photographs, so I will ask the reporter to put the identification on the back of the photographs, and we won't use this other sheet.

BY MR. KENKEL:

Q. Mr. Crowder, I show you two photographs which have been marked for identification, respectively, as WHBT 4-A and 4-B, and ask you if this is not the residence that was covered by the 1956 deeds? I will tell you these are recent photographs, not then, but is this the residence involved? A. I used to own this residence. Yes, it is.

MR. KENKEL: I now ask that WHBT 3 and 4-A and 4-B be admitted.

PRESIDING EXAMINER: Mr. Letterman.

MR. LETTERMAN: I have clarifying questions.

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VOIR DIRE EXAMINATION

BY MR. LETTERMAN:

Q. Do you recall specifically, Mr. Crowder, when this residence was purchased? A. No. I don't. '57, I guess. That is a guess. I don't remember exactly. Won't the deed show?

MR. KENKEL: The deed has the date, if you want it.

MR. LETTERMAN: Well, I am asking–

THE WITNESS: I don't recall exactly.

BY MR. LETTERMAN:

Q. Did you at any time live in the house? A. Yes, part of the time when I was in Livingston.

Q. Over what period of time? A. I believe I owned the house about three years, the best I remember.

PRESIDING EXAMINER: Any objection to the receipt of 3, 4-A and 4-B, Mr. Bilger?

MR. BILGER: May I ask some quailifying questions also?

PRESIDING EXAMINER: Surely.

BY MR. BILGER:

Q. During the period that you owned this residence, Mr. Crowder, did you have another residence?

MR. KENKEL: Objection, your Honor. That is not qualifying.

PRESIDING EXAMINER: That is not a qualifying question.

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Let us ask what the purpose of this offer is in the first place. Nobody has asked that so far.

MR. LETTERMAN: I made an assumption.

MR. KENKEL: I think Mr. Letterman's assumption is correct, to show he did own the residence property and he lived there. We already had questions about—

PRESIDING EXAMINER: I understand that, but when we talk about misrepresentations, if there are, and I am not saying there are, they all have to deal with the traffic itself. We can't roam far and wide to consider this matter. We have to confine ourselves within certain narrow limits, Mr. Kenkel, and that is way I am asking about the relevance of that to the question of traffic or to the Carol Issue. I don't see how it relates to the Carol—

MR. KENKEL: With respect to the traffic, Mr. Examiner, I am sure you are familiar with the pleadings, that have preceded our coming here in the hearing room and, in an effort to shorten this up, I will perhaps characterize what Mr. Crowder has alleged in affidavit or his attorney has argued in pleadings, but as I understand they are saying or their defense so far, in the pleading stage, to the traffic question is that he simply had a momentary active interest in WLIV and from that point on only a financial interest.

My purpose in showing this is he bought this substantial residential property in '56 and he lived there, and I think we

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are entitled to argue subsequently you don't do that for a station in Livingston, if you are not going to be active. They will have their turns, but I think it is within the issues at this time.

PRESIDING EXAMINER: Yes. Is there objection to the receipt of these exhibits for identification then?

MR. BILGER: I think I have another qualifying question.

PRESIDING EXAMINER: All right.

BY MR. BILGER:

Q. As the record now stands, it is a matter that he lived there.

Did you reside at any time in the home, Mr. Crowder? A. Part of the time. Yes.

MR. BILGER: If the Examiner will indulge me.

PRESIDING EXAMINER: Yes.

MR. KENKEL: May I ask with whom counsel is conferring?

PRESIDING EXAMINER: No, no, counsel can confer with anyone.

MR. BILGER: For the record, I have Mrs. Crowder here, this is Mrs. Crowder and I take it the gentleman at counsel's table to her right is Mr. Burn.

PRESIDING EXAMINER: Of course, that is all right. I raised no question about your conferring with Mrs. Crowder.

MR. KENKEL: May we have the originals admitted with leave to counsel for withdrawing the same for pruposes of making additional copies?

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PRESIDING EXAMINER: I gathered there is no objection then to the receipt of these documents. All right, WHBT Exhibits 3, 4-A and 4-B are received with leave granted to withdraw them to make the necessary number of copies.

(The documents heretofore marked for identification as WHBT Exhibits 3, 4-A and 4-B, were received in evidence.)

MR. LETTERMAN: As a point of information, your Honor, may I inquire, of course, when were these photographs taken? Do you know?

MR. KENKEL: Yes, March or April, '67, this year. I told Mrs. Crowder they are recent photographs, not as of the time of that transaction.

DIRECT EXAMINATION (Resumed)

BY MR. KENKEL:

Q. Taking a look at these two photographs, the way the house appeared when you lived there, have there been substantial changes? A. Not when I purchased it.

Q. How did it appear when you purchased it? A. This part was not here.

Q. What part was that? A. The garage side.

MR. LETTERMAN: Would you be a little more explicit on

the record. If we don't have something more express on the record, we won't know later on.

PRESIDING EXAMINER: All right, we identify it if it is important. I thought Mr. Crowder said the garage side, is that it, Mr. Crowder?

THE WITNESS: Correct.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. Mr. Crowder, your application that is now in hearing, that is, a new station at Harriman, Tennessee, on 970 KC, and we have here in the hearing room the Commission's duplicate docket. Now, the conformed copy in the duplicate docket indicates it was executed or signed September 30, 1961, by you, is that correct? A. That is correct.

Q. By the way, the notary is R. H. McCoin, is this your brother-in-law? A. My brother-in-law, yes.

Q. Now, further, on page 2 of the application form, it indicates by the numerical designator one that you prepared Exhibits 1, 2, 4, and 5, and that Exhibit No. 2 was prepared under your direction, excuse me, Exhibit 3 was prepared under your direction and the engineering was prepared by John Mulaney, is that correct? A. Yes, it is.

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Q. Now, after the application was filed, you filed an amendment to that application, did you not, sir? A. That is correct.

Q. After the application was filed, you filed an amendment thereto? A. Right.

Q. Now, I am directing your attention to a copy of an amendment stamped in "November 13, 1961," and indicating that it was signed by you before a notary public, McCoin, on November 8, 1961? A. Correct.

Q. Now, would you read that amendment, sir? Read it into the record. A. All right.

Q. All right, I will read it since he didn't.

MR. BILGER: He wanted you to read it.

MR. KENKEL: I wanted him to, but I will.

"Dear Mr. Waple, we wish to amend our application referenced above for a new standard broadcast station at Harriman, Tennessee, in the following respects: We wish to add a new exhibit (Exhibit 6) to Section IV in response to paragraph 10 of that section. Exhibit 6 consists of letters evidencing our efforts in surveying the community and its needs."

Section, Roman V, hyphen capital A, paragraph 4, Section, Roman V, capital G, at paragraph 1 should be amended to show

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the street address of the transmitter location at Emory, E-m-o-r-y, Street. As will be seen by figure 9 of the engineering, this is the correct designation of the street and does not represent a change in location, therefore, the coordinates given in Section V(A) and V(G) do not have to be changed.

Respectfully submitted, Harriman Broadcasting Company, by F. L. Crowder.

There is a reference there, as I have read it and you have seen it, to our efforts in surveying community needs. Who was "our" at that time?

THE WITNESS: You mean you want to know who made the survey? Is that what you mean?

BY MR. KENKEL:

Q. Your refernce is "our." Whom did you include at the time? A. Mr. Scarborough made the survey.

Q. Mr. Scarborough made the survey. I show you a copy of a letter dated– A. He secured all of the letters. Mr. Scarborough secured all of the letters but this one right here.

Q. All of the letters that were submitted on the amendment were obtained by Mr. Scarborough except the one I am now showing you which is indicated October 17, 1961, and signed W.K. Warren, is that correct? A. That is correct.

PRESIDING EXAMINER: Who got that letter?

THE WITNESS: Mr. Warren gave me the letter.

PRESIDING EXAMINER: I see. All right.

BY MR. KENKEL:

Q. You say Mr. Warren gave you the letter. When did he give it to you? A. I suppose the day it is dated there.

Q. Isn't it true, sir; that Mr. Warren wrote you a letter and you told him you didn't like the letter and you, therefore, prepared another letter for him to sign? A. No, it was not that way. I told Mr. Warren I didn't think the letter he wrote would be sufficient. He said, "O.K., you fix up one and I will sign it."

Q. This letter of October 17, '61, you prepared? A. No, I didn't prepare it. Mr. Scarborough prepared it.

Q. Mr. Scarborough prepared it? A. That is right. As far as I know, I believe that is right.

Q. He prepared it and—

PRESIDING EXAMINER: Gentlemen, we would have to go back several generations to change the genes. People are impulsive or not impulsive. Mr. Kenkel is a rapid talker and Mr. Crowder is a rapid talker. There is nothing wrong about these matters, but is difficult to take. They are both estimable gentlemen, but that is not the point, the problem is it is

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difficult for the reporter to get it.

Let's get that question and answer, if he can, calmly.

MR. KENKEL: Will the reporter read so much of the pending question as he has, please?

(The record was read by the reporter.)

PRESIDING EXAMINER: All right, let's start over again, Mr. Kenkel.

MR. KENKEL: I don't think we have to start into that again.

PRESIDING EXAMINER: Do we have the answer you want then?

MR. KENKEL: Yes.

BY MR. KENKEL:

Q. You are not even sure whether Scarborough prepared it or not? A. I am not positive, no. I am not sure that is the letter either. I don't know whether Mr. Warren copied it word for word or not. I don't know. I don't remember.

Q. Now, I am showing you a letter or a copy of a letter dated October 26, 1961, signed by James Harmon, addressed to Freeman L. Crowder? A. That is correct.

Q. Mr. Scarborough obtained that letter? A. I suppose so. I told you the only one I obtained was the one. Mr. Scarborough I supposed obtained the rest of them.

Q. Well, you told me you obtained just one and now we find out you didn't obtain it, that Scarborough may have prepared it? A. I did obtain it. He gave it to me in person.

MR. BILGER: Give me a chance to object. I object to the characterization of counsel.

PRESIDING EXAMINER: Yes. I think the transcript will speak for itself. All right, yes. The objection is sustained.

BY MR. KENKEL:

Q. Just to clear this up Mr. Warren handed you then this letter? A. Correct.

PRESIDING EXAMINER: Now, you say "this letter" and you mean—

MR. KENKEL: October 17, 1961, signed by him?

THE WITNESS: That is the letter he gave me, yes, sir.

BY MR. KENKEL:

Q. Mr. Harmon's letter dated October 26, 1961, Mr. Scarborough prepared it? A. I don't know.

Q. Did Mr. Harmon give you this letter? A. No.

Q. He did not? A. No. Mr. Scarborough mailed all of the others at one time to me in Livingston, Tennessee.

Q. Mr. Scarborough obtained them and mailed them to you

in Livingston? He mailed them to me. I don't know about—I guess he obtained them.

Q. How about the letter dated October 13, 1961, signed by C.R. Black, Superintendent, Harriman City Schools, this was obtained by Mr. Scarborough and mailed to you? A. Mr. Scarborough mailed it to me. I suppose he obtained it. I just made a statement he obtained all of them as far as I know, but the one from Mr. Warren.

Q. Mr. Crowder, I am showing you a card entitled, "Rate Schedules for WXXL"? A. It is my card, my schedule.

MR. KENKEL: That is your schedule.

May we have it marked for identification and then I will ask that it be admitted as WHBT No. 5.

(The document referred to was marked for identification as WHBT's Exhibit No. 5.)

MR. LETTERMAN: May I interrupt just a moment?

PRESIDING EXAMINER: Surely.

BY MR. LETTERMAN:

Q. There is one question I would like to ask the witness in conjunction with the prior testimony. Mr. Crowder, did you say that Mr. Scarborough mailed the letter to you? A. As I recall, yes. He might have given it to me

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personally. I really don't remember for sure.

Q. You see, in connection with that he mailed them to you, did you say he mailed them to you in Livingston? A. If he mailed to me in Livingston, it was Livingston, yes. I would have to check with Mr. Scarborough.

Q. I am still not clear. He mailed them to you from Harriman or did he mail to you— A. Livingston.

Q. Who was in Livingston, that is, what I am trying to find out. A. I was in Livingston.

MR. LETTERMAN: All right, thank you very much, Mr. Examiner.

PRESIDING EXAMINER: All right, Mr. Kenkel.

BY MR. KENKEL:

Q. I show you marked for identification WHBT Exhibit 5, the WXXL rate card, and is this the rate that you sell and have sold advertising for on the station since it went on the air you told us in August 12, 1966? A. Is that the rates?

Q. Yes. A. Yes, and I sold some for less. I met my competition.

Q. Which ones have you sold for less than how much less? A. I would have to check the records.

Q. You answered my question. Give me two or three if you

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don't have them all. Which ones have you sold for less?

MR. BILGER: Do you understand the question?

THE WITNESS: He wants to know the people I had sold for less than on the rate card.

MR. BILGER: Are you speaking of advertisers or which one of the rate card quotations?

MR. KENKEL: I am going to get the advertiser and then the rate at which it was sold.

THE WITNESS: I recall one, Sexton Chevrolet Cadillac.

BY MR. KENKEL:

Q. What did you sell Sexton Chevrolet Cadillac Company? A. $1.25 for a thirty second spot.

Q. How many spots is that, for one month? A. No particular time. As of now he is running 20 spots per day, six days a week.

Q. At the time you sold to Sexton? A. No specified number.

Q. No specified number. He would buy a few or many at that rate? A. He said there would be less than 15 per day.

Q. But there was no commitment that he buy 15 or any number? A. No.

Q. Your answer is "No"? A. Yes, I guess you could consider it a commitment.

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PRESIDING EXAMINER: You see, Mr. Crowder, when Mr. Kenkel speaks you interrupt him and that is making an impossible record. The reporter has a very difficult job.

THE WITNESS: I am sorry.

BY MR. KENKEL:

Q. There was no written sales purchase contract? A. No written—

Q. I am sorry, maybe I am going too slow for you and you think I stopped. No written sales purchase contract between you, you being WXXL and Sexton Chevrolet Cadillac with respect to that?

MR. BILGER: Mr. Crowder, the reporter can't take a shake of the head.

THE WITNESS: I said, "No, no written contract."

BY MR. KENKEL:

Q. Sexton Chevrolet Cadillac was one. What is another one sold for less than the rate on the rate card?

How about Norris Creamery? A. Norris Creamery had a program not spots.

Q. When did Norris Creamery start advertising? A. Well, I think it was in September.

Q. 1966? A. Right.

Q. When you say he had a program, he bases a newcast? A. A newscast.

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Q. Is he still buying that? A. Yes.

Q. What rate? A. $6.00.

Q. On what basis did you calculate that rate? A. A year's rate, I think.

Q. He signed a contract for a year's sponsorship? A. No contract.

Q. There is no contract. How about J. C. Hedrick? A. What do you mean "How about him"?

Q. Have you sold him advertising on WXXL? A. Yes, back in September and October, I believe.

Q. What rate did you charge him? A. As I recall the spots were $1.50.

Q. Do you recall how many spots you broadcast for him? A. No. Mr. Scarborough was managing the station at that time.

Q. Were you paid, you being WXXL, were you paid at the rate of $1.50 a spot for every spot you carried for Mr. Hedrick? A. I would think so, yes, sir; as far as I remember, yes.

Q. Check your records and let me know if it is true. A. I don't have to check.

Q. The number of spot broadcast and the total amount of money paid? A. I can't do that until I get back to Harriman.

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Q. I realize that. I would like you to supply it. A. Right.

Q. How about the House of Flowers? A. House of Flowers?

Q. Yes. Mr. Earl Duff, proprietor. A. I don't remember.

Q. You sold him advertising? A. I didn't, no. The saleslady probably did.

Q. At what rate was his advertising? A. I don't remember.

Q. If I suggest it was less than the rate card rate, you would agree? A. I just told you I don't remember.

PRESIDING EXAMINER: The fact you say you don't remember, Mr. Crowder, doesn't mean that Mr. Kenkel can't try to refresh your recollection.

THE WITNESS: Correct.

PRESIDING EXAMINER: This is cross-examination.

THE WITNESS: That is right.

If I remember, I will tell him.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. Well, it could have been less than the rate card rate? A. It could have, yes.

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Q. Will you also check that, please, and see what the rate was? A. Yes.

Q. How about Arnold's Insurance Agency? A. He is a newscast.

Q. He buys a newscast? A. Right.

Q. Is there a written time or program sales contract with Arnold? A. No sales contract. We don't have any contract with any advertiser than Doctor Pepper Agency.

Q. Doctor Pepper, they used to be on WHBT solely? A. What do you mean "solely"; if it was Harriman, I am sure it is solely. They own the station there.

Q. Now, they are also on WXXL? A. They are on my station. I don't know about WHBT.

Q. Didn't you have a Dr. Pepper franchise? A. Yes.

Q. And this Dr. Pepper is advertising on your station with the Harriman franchise? A. It is the parent company advertising agency. I believe it is the J. Walter Thompson Company, the best I remember, or the Grant Company. I don't know. Anyway, the agency is in Texas.

Q. When you finish your answer, let me know.

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A. I am finished.

Q. To whom in the Dr. Pepper Company did you talk about getting Dr. Pepper advertising on WXXL? A. We didn't. We had an inquiry from their agency in Texas, on the rate card and the availability.

Q. You talked to no one about getting Dr. Pepper advertising on your station? A. No, sir. No, sir.

Q. How about Coca-Cola? A. Coca-Cola, we never had Coca-Cola.

Q. Have you been trying to get Coca-Cola? A. We tried at one time, yes.

Q. What rate have you offered on spots on this to Coca-Cola in order to get them? A. We offered the same rate ACT was charging, whatever it might be.

Q. You, your testimony is you haven't offered it for $1 a spot? A. No, sir.

PRESIDING EXAMINER: Now, wait, that is a negative question to a negative answer. Now, what is the question and the answer, Mr. Kenkel? You said you have it and then Mr. Crowder said, "No, sir."

BY MR. KENKEL:

Q. For the record, I will rephrase it. Have you offered

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spot, 30-second spots or one-minute spots, either one, to Coca-Cola advertising for $1 a spot? A. No, sir.

Q. You haven't? A. No, sir.

Q. To whom in the Coca-Cola organization have you talked about carrying the Coca-Cola advertising? A. I talked to Mr. Cole.

Q. What is his first name? A. Mr. Charlie Cole.

Q. And would you identify for us where he is and his position? A. He is the co-owner of the Coca-Cola Plant in Rockwood, Tennessee.

Q. He is the only one you talked to about Coca-Cola advertising in the Coca-Cola– A. The one I talked to, the only one I talked to; yes, sir.

Q. Do you know a Claude "Red" Long, salesman for the Coca-Cola Bottling Company, Rockwood, Tennessee? A. Yes, sir, I know Mr. Long.

Q. Is it your testimony that you have never discussed with Mr. Long any Coca-Cola advertising on WXXL? A. I might have in a round about way.

Q. Well, I put it to you, sir, you have talked to him? A. Well, Mr. Charlie Cole is the man that signed the

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contract, if we have a contract. Mr. Long would have no right to buy time on radio stations.

Q. My question to you is, you have talked to him and in fact tried to get through him Coca-Cola to buy time on WXXL, have you not? A. No, I didn't try to get through him; no, sir.

Q. In the Harriman Billiard Parlor, what kind of soft drinks do you have in the Harriman Parlor? A. Pepsi and Coca-Cola.

Q. The Coke is a six ounce? A. Six and half ounces, to be exact.

Q. And you didn't, strike that. Now, Mr. Claude "Red" Long has been trying to get you to put a 12-ounce machine in the billiard parlor, hasn't he? Speak up. A. No.

Q. He has not? A. No.

Q. I will ask you directly, you have never, or have you ever told Mr. "Red" Long that if he would work with his supervisor, Mr. Cole, and get some Coca-Cola advertising on WXXL, that you would put a larger Coke cooler in the Harriman Billiard Parlor and take the Pepsi machine and increase the sales on which Mr. Long would get commission? A. I told him that.

Q. You did tell him that. So you have discussed

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with Mr. Long Coca-Cola advertising on WXXL? A. But not selling, no.

Q. Not that he would sell, no, he would get the Coca-Cola people in Rockwood to do advertising on the station and you would, in turn, help Mr. Long increase his Coke sales in turn, is that correct, excuse me, by putting the new cooler in the billiard parlor? A. As I told you, Mr. Long has no right to buy advertising.

Q. Are you finished? A. Sure.

Q. Whether or not he has had a rate, and let's terminate this, did you have the conversation with him, didn't you? A. Well, in a round about way; yes, sir.

Q. The rate card—WHBT's Exhibit 5, for identification, of the advertisers now buying spot announcements on WXXL, how many of them buy at the rate card price? A. I would have to check my records.

Q. For purposes of my question now, how many advertisers are buying spots on WXXL roughly? A. I would have to check my records.

PRESIDING EXAMINER: Well, guess. Make a good informed guess.

THE WITNESS: You mean spot announcements?

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BY MR. KENKEL:

Q. Spot announcements, now, yes. A. I would say 25.

Q. And of that 25, give me an estimate of how many are buying at the rates shown on the rate card? A. I would say 15. Estimated 15 are buying at rate card rates and 10 are buying at a lesser rate.

Now, before you said you don't, and if I am miscasting your testimony, tell me, because I will rephrase the question, but before you told me you don't sell news on the rate card basis, is that correct? A. No, I didn't tell you that.

Q. Well, how are news programs sold, commercial sponsorship of news programs? A. What do you mean "How are they sold"?

Q. Norris Creamery. A. One pays $6.60 and the other pays $6.00.

Q. Now, you answered and I don't understand what you said. How are five minute newscasts sold? What is the rate for commercial sponsorship according to the rate card and I will hand it to you. A. What do you mean? How many times per year or what, per week?

Q. Well, the newscast sponsored by Norris Creamery—how often is that carried on the station?

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A. Six days a week.

Q. Six days a week? A. Ten-minute newscast paid $6.00. This is your rate.

Q. Ten-minute or five-minute? A. Ten-minute.

Q. When you say "this is your rate right there," show it to me? A. $6.00.

Q. You are pointing then to last line on rate schedule which is 364 times ten minutes at $6.00? A. Correct.

Q. Excuse me, before I forget, may I at this point ask what has been marked for identification as WHBT-5(B) admitted and that counsel have leave to withdraw the same and make the necessary copies.

PRESIDING EXAMINER: Any objection? Mr. Letterman.

MR. LETTERMAN: I wanted to ask a few questions about the card.

PRESIDING EXAMINER: Surely.

VOIR DIRE EXAMINATION

BY MR. LETTERMAN:

Q. Mr. Crowder, do you differentiate between times of day with respect to the rates you charged? In other words, do you charge for early morning hours and less for midday hours?

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A. No, sir.

Q. The same rate throughout the day? A. Right.

Q. And could you explain for us on this rate card are rates for programs shown, indicated? For example, the first line there is a

15-minute time period, one time indicates a charge, of $15, and does it mean $15 is charged for a program, 15-minute program if you broadcast one time? A. Right.

Q. Now, sir, I notice that across the rate card is only one indication of a 30-second announcement or program. Is that the only type of spot you have, a 30-second spot or one-minute spot or do you have 10 seconds? A. We have 10, 20, 30 and 60.

Q. That is not indicated, though, on the rate card? A. No.

MR. LETTERMAN: Thank you very much.

PRESIDING EXAMINER: Any objection to the receipt of WHBT Exhibit 5?

All right, WHBT Exhibit 5 is received.

(The document heretofore marked for identification as WHBT Exhibit 5, was received in evidence.)

BY MR. KENKEL:

Q. Mr. Crowder, you told me there are approximately 25

advertisers on WXXL buying spot announcements?

Q. How many are buying programs such as Norris Creamery sponsoring these newscasts? A. As I recall, that is the only two other than religious programs.

Q. The only two. What is the other one beside Norris Creamery? A. Arnold Insurance.

Q. Arnold Insurance? A. Right.

Q. What rate are you charging Arnold Insurance? A. $6.60.

Q. For what? A. As I recall, it is, I don't remember whether it is five or ten minutes, five, I believe, though.

Q. Mr. Arnold handles your business, doesn't he? A. Some of it.

Q. Did you formally employ Anna Sue Birchfield? A. Well, Mr. Scarborough employed her.

Q. Mr. Scarborough hired her for you, but she was employed by WXXL, was she not? A. True.

Q. How long was Anna Sue Birchfield employed? A. As I recall four weeks.

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Q. And she was a salesman or rather a saleslady in this case? A. True.

Q. What four-week period was this? A. I don't recall.

Q. You had conversations with Mrs. Birchfield, did you not, about selling Arnold Insurance Agency? A. Yes, sir.

Q. And I put it to you, the substance of your conversation was she should tell him he should buy time on WXXL because you had business insurance and automobile insurance coming up for renewal and he should keep that in consideration with Mrs. Birchfield? A. Repeat the question, would you please, sir?

Q. Will the reporter read it, please?

(The record was read by the reporter.)

THE WITNESS: I deny that.

BY MR. KENKEL:

Q. What did you tell Mrs. Birchfield to tell? A. I didn't tell Mrs. Birchfield to tell Mr. Arnold anything.

Q. Well, you did have a discussion with her about telling— A. I told her that he should buy from us, but I didn't tell her to tell him that.

Q. How many salesmen—strike that. If I may, just

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going back to Coca-Cola, you also talked with Mr. Nedd, whose nickname is "Pud, P-u-d, Monger, M-o-n-g-e-r, did you not? A. As I recall, I talked wit— him, he and Mr. Cole together, at the station one day.

Q. In the station or at the Rockwood— A. At the station.

Q. Did you have any additional discussion with Mr. Monger over the telephone? A. Not that I recall, no.

Q. Reverting just a moment to the bottling plant in Livingston, after you purchased it, you physically enlarged it, did you not? A. How do you mean physically?

Q. Had additional built there? A. Yes.

Q. Isn't it true that you bought materials and actually supervised the building, the construction yourself, you didn't use a builder or contractor? A. I didn't use a contractor, if that is what you mean.

Q. You were your own building supervisor, so to speak? A. More or less, yes.

Q. Well, more or less. You were, were you not? You didn't have anybody overseeing the construction other than yourself, is that not correct? A. Other than the foreman of the crews that was building

it. He originally overseed it.

Q. You hired the foreman of the crew directly? A. Sure.

Q. And you supervised him? A. Well, if you call it supervision. I guess I did.

Q. Turning now to the present application that is in hearing, I direct your attention, sir, to Exhibit 4, programming schedule, page 1, labeled, "Monday through Friday," page 2, labeled, "Saturday", and page 3 labeled "Sunday" and who prepared that program schedule? A. Mr. Joregensen, I guess. I sent him the list.

Q. What did you send Mr. Jorgensen? A. What application is this?

Q. This is the Harriman application, the one in hearing.

MR. BILGER: The AM facility?

BY MR. KENKEL:

Q. Yes. A. I sent the list to Mr. Pepper. If this is the WXXL application.

MR. BILGER: May I see it?

PRESIDING EXAMINER: When you say "Mr. Pepper," you mean Mr. Vincent Pepper?

THE WITNESS: Yes.

PRESIDING EXAMINER: We have for identification here Dr. Pepper and we don't want to confuse him.

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MR. BILGER: For the record he is Vincent A. Pepper of the law firm of Smith and Pepper, and no relation to Senator Pepper or Dr. Pepper.

PRESIDING EXAMINER: Nor salt and pepper.

BY MR. KENKEL:

Q. I don't know how much of this Dr. Pepper and Smith & Pepper got on the record, but I show you a copy of the application and it indicates at that time the legal representative was N.E. Jorgensen, J-o-r-g-e-n-s-e-n? A. Correct.

Q. Mr. Jorgensen it was sent to? A. Yes.

Q. It was not sent to Vincent Pepper? A. Correct.

Q. When you say you sent Mr. Jorgensen a list, what did you send him? A. What do you have reference to?

Q. Well, you told me– A. I sent for him to file all of it, to file with the Commission, if that is what you mean, the application.

Q. You prepared the application? A. Most of it; yes, sir.

Q. What part didn't you prepare? A. Engineering section.

Q. Other than that, you prepared the application?

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A. As far as I remember, yes.

Q. And the application on page 1 shows the notices and communications to be sent to F. L. Crowder, Post Office Box 39, Livingston? A. Right,

Q. To help you, Mr. Crowder, I have another copy, I will turn to Exhibit 4, the program 7 a.m. to 7:15 a.m., Farm Report, Agricultural Live Commercial, is that being carried on WXXL?

MR. BILGER: Mr. Examiner, we have two issues, traffic and the Carol Issue.

Now, how programming in this context is relevant to either issue I fail to see. I object to it on the grounds it is not relevant to the issues which we have. We have gone into program contact letters and I said nothing about that. But now we are down to the programming and I see no connection between that and traffic or—

PRESIDING EXAMINER: The only way I could see it would be that some program was taken off WHBT as a result of the operations of WXXL, but I don't know how this ties in.

MR. BILGER: Mr. Examiner, I believe the question is directed to an application filed in 1961.

PRESIDING EXAMINER: Well, this is '61 application. This is the application in suit, of course, yes.

MR. BILGER: It is the original 301 application that we

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filed in '61.

PRESIDING EXAMINER: All right, let's get Mr. Kenkel to make a connection. Mr. Kenkel.

MR. KENKEL: Yes, Mr. Examiner, the connection is two. We proffer on both issues, but let's take up first the proffer under the traffic issue. It is our contention, as you know, and we hope to establish before the hearing is over through evidence both direct and circumstantial, on which we will make our final arguments, that the applications in hearing does not eventuate from an intention to serve extant needs and interests in the Harriman community but rather the motivation intention was to obtain a permit for a station which could be built up and subsequently sold.

PRESIDING EXAMINER: All right, the objection is overruled.

Go ahead, continue. I am sorry to break in, but in order to save time–

MR. KENKEL: Will the reporter read the pending question?

MR. BILGER: Before he does, may we have a five-minute recess and will the record indicate I might talk to my witness.

PRESIDING EXAMINER: Let us take a five minute recess.

(Whereupon, at 3:00 p.m., a recess was taken until 3:05 p.m.)

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PRESIDING EXAMINER: Let us go on the record, gentlemen.

Mr. Kenkel.

MR. KENKEL: I will ask the reporter to read back the last question.

(The record was read by the reporter.)

PRESIDING EXAMINER: Mr. Letterman.

MR. LETTERMAN: Your Honor, I think we should establish whether or not this particular showing is the showing of WXXL and determine whether it has ever been amended.

In other words, to be sure that we are not dealing with a program log that at present has been amended. Can you establish that?

MR. KENKEL: That is an excellent thought.

BY MR. KENKEL:

Q. Mr. Crowder, Exhibit 4 is the application which was filed was not amended prior to the Commission's grant of the application, was it? A. I don't think so.

Q. If I suggest to you that I have gone through it and don't find the amendment, you, being the individual owner and applicant, you would know, wouldn't you? And if I suggest there isn't any, would you agree? A. I would think so.

Q. To be sure, let us ask it again. I want to know from you, has the programming schedule in the application been amended?

[304-B]

A. I don't think so.

Q. Would you take a moment and go through and tell me?

PRESIDING EXAMINER: You represent that there has been no amendment. If Mr. Bilger is willing to accept that, that is sufficient.

MR. BILGER: I will accept pending my own examination.

PRESIDING EXAMINER: Of course, let us not take any more time on that.

MR. KENKEL: This is to satisfy Mr. Letterman.

PRESIDING EXAMINER: We understand. Subject to check, it is assumed that the application was not amended in so far as the programming was concerned.

BY MR. KENKEL:

Q. Now, may we have the pending question or do you know, sir? A. No, it hasn't been amended, I don't think.

Q. The pending question concerning the 7 to 7:15 Farm Report, agricultural, local, commercial, is that being carried on WXXL? A. As of now?

Q. Yes, sir. A. I don't think so, probably later in the day.

Q. Has it been carried at all since August 12, 1966 through today? A. Since August 12, 1966?

[304-C]

Q. Yes. A. Sure, we have carried the program, a farm program, now, whether it is the Farm Report, I don't remember.

Q. When did you carry it? A. It seems to me around 11 o'clock. I would have to check the log to be sure.

Q. Would you do that and then supply for the record the length of time the program has been carried, when it started and how long it has been carried?

MR. BILGER: I think questions like this should be addressed to counsel as a matter of procedure.

PRESIDING EXAMINER: All right, Mr. Bilger.

MR. KENKEL: Would you supply it, sir?

MR. BILGER: Supply what, the log?

MR. KENKEL: The matter that I addressed to the witness.

MR. BILGER: I think perhaps, Mr. Examiner, we don't have a copy of our program log, to my knowledge, in Washington, any one of them. But, if their examination is going to be lengthy and go down program by program, I have no objection to supplying one of our logs.

On the other hand, if he is interested in one single program I will supply that information by a telephone call to Harriman, I suppose.

We have been here quite some time and I don't know how long he is going to go program by program. If it is going to be too

long I will get the logs here.

PRESIDING EXAMINER: The best evidence rule doesn't apply as such except as far as the contents of the logs are concerned.

MR. BILGER: That is what I was asking about.

PRESIDING EXAMINER: He was really asking whether the program was given.

MR. BILGER: I am not arguing anything about the so-called best evidence law. I am saying, if he wants to know what programs we carry and contrast them to a 1961 schedule of program representations, I think it would be simplified if we get one of our logs, but I don't care how he wants to go about it.

MR. KENKEL: One day's log might not be sufficient. I would suggest, Mr. Bilger, as an effort to assist you in our mutual desire to move this along, if you will prepare for me a schedule and I will name the programs on this 1961 program schedule, and show me if they were carried on WXXL, and when, in other words, if they were carried sometime between August 12, 1966 and today, the period of time involved and if you will do that I will read into the record the programs which I have interest in.

MR. BILGER: I appreciate your attempt to assist me, Mr. Kenkel. I will attempt to get you the information about the farm program you ask about.

You may proceed any way you wish.

MR. KENKEL: I am sorry, Mr. Examiner, I have tried.

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BY MR. KENKEL:

Q. Mr. Crowder, I put it to you that the program, 7 to 7:15 a.m., Farm Report, agricultural, local, commercial, is not being carried on WXXL and hasn't been since August 12, 1966. A. Not at that time, yes, sir, I will agree with you.

Q. The program, Harriman School News, 8:30 to 8:35, educational, local sustaining, is that being carried on WXXL? A. Not as Harriman School News. We give school news, but it is not headed "School News."

Q. How is it headed? A. Local news.

Q. What time is it carried? A. I would have to check the log. I can't remember all those times in the logs.

Q. You have a news program at 8 o'clock? A. I believe we do.

Q. It is part of that 8 o'clock news program? A. Yes, if we have school news it is. We don't have the school news everyday, I am sure.

Q. So you did not have Harriman School News Monday through Friday? A. Not every week.

PRESIDING EXAMINER: Which is it, not every day?

THE WITNESS: I would have to check the newscast to know if it is everyday to be sure, but I am sure it is not everyday.

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I don't believe it would be everyday, school news.

MR. LETTERMAN: I don't know whether the witness understands the questions or exactly what, but apparently there was a program called Harriman School News. Now, the witness answered the question that he carries Harriman School news as part of the local news which carries with it an inference that the program "Local News" might be identified with Harriman School News.

I think before we proceed further we should have a common meeting of minds on the terms we are utilizing.

PRESIDING EXAMINER: I think it is pretty well understood what we are talking about. As I gather, Mr. Crowder said he doesn't carry school news everyday in the week, is that it?

THE WITNESS: As I say, I would have to check my newscasts, but I am sure we don't carry Harriman School News everyday.

BY MR. KENKEL:

Q. Let me ask, you do not carry a five-minute program at 8:30 entitled "Harriman School News" at all? A. No.

Q. No day of the week? A. No.

Q. All right.

Do you carry market reports from 12 noon to 12:05, agricultural, wire commercial? A. We carry market reports, but as to the time, I can't

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tell you.

Q. Do you have a program on Saturday, 6:45 to 7, Farm News of the Week, that is 15 minutes, Farm News of the Week, agricultural, local, sustaining? A. I would have to check. I would have to check that, I don't remember.

Q. You don't remember? A. No, I don't.

Q. You are the owner and operator of the station, aren't you? A. I am supposed to be.

Q. And Mr. Scarborough left your employment when, in December? A. He left in January.

Q. He terminated as General Manager in December? A. Yes.

Q. And stayed in the sales capacity? A. Right.

Q. Since the first of December, you, by necessity, have been involved day to day in the station? A. Right.

Q. On Saturday, 6:45, you have a program, local sustaining, Farm News of the Week. A. I doubt if we carry the program at that time.

Q. I put it to you that you don't do you agree with me?

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A. As I say, I doubt it.

PRESIDING EXAMINER: Do you doubt that you carried the program?

THE WITNESS: At that time of the day.

BY MR. KENKEL:

Q. You doubt that you carry the program at that time of the day. What time do you carry it? A. I would have to check my log. I can't remember all those times.

Q. Would you tell us when you do carry this program? A. I believe my attorney said he would furnish you with some logs.

MR. BILGER: I did not say that, Mr. Crowder. You just answer his questions.

MR. KENKEL: Will you check your logs and supply for the record through your attorney or directly, the time of the day and the Saturday since August 12, 1966, that you have carried this Farm News of the Week?

MR. BILGER: Once again, a request was made to my client on the witness stand and I think it should be made to me.

PRESIDING EXAMINER: Mr. Kenkel has asked for an answer to his question. I don't know how he wants that answer supplied. If Mr. Crowder can answer I suppose the only he can answer is through the logs.

Now, Mr. Kenkel, do you want Mr. Bilger or did you ask

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Mr. Bilger to supply a copy of the logs which will show the presentation of that program?

MR. KENKEL: Yes, Your Honor, I would. I would ask to see the copy of the logs that show the presentation of that program that is, Farm News of the Week on Saturday so it would only be Saturday logs since August, 1966.

MR. BILGER: Yes, I will examine the log.

MR. KENKEL: Are you finished, sir?

MR. BILGER: No, not yet. I should like this moment recorded in his story since I am going to make a request later myself. Yes, sir, I will supply the log which shows that program, if we have one or something similar to it at a different time.

MR. KENKEL: And the logs, plural, if you carry it on more than one occasion.

MR. BILGER: Going back to when we went on the air in August?

MR. KENKEL: Yes, sir. This is proposed for Saturday, one day a week.

MR. BILGER: I will not promise to supply logs from August. If we run the program I will attempt to pull the logs out for that.

MR. KENKEL: I don't like to quarrel with my brother, I find it very distressing to take issue with counsel and I have to be quite careful about what I am saying now, but as the Examiner

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is aware from the discussions that we have had during the pre-hearing conferences, we have had some disagreements subsequent to a request made and answers made on the record and in order to avoid that which I think is distressing to all of us, rather than leave this point now as to what my brother has agreed to do, may we have it clear on the records and ask you if you are going to meet this request?

I would like to have the logs for the Saturdays from August, from that week in which August 12 fell. I will give you the first Saturday date, from Saturday, August 13, 1966, through Saturday, May 6, 1967, or the pages of them, if there are several pages of the log. I don't need the whole Saturday log, but the page of that Saturday log which indicates the Farm News of the Week program. That is my request.

PRESIDING EXAMINER: Mr. Bilger?

MR. BILGER: I have a request in mind for the March log that I didn't get without a subpoena duces tecum.

PRESIDING EXAMINER: But now we are in connection with an examination of Mr. Crowder. We can't equate the two matters and I think Mr. Kenkel is entitled to have the question answered one way or the other.

MR. LETTERMAN: It could be that he would have to supply no logs because a stipulation could be reached that the program was not carried at all.

PRESIDING EXAMINER: If Mr. Bilger finds that after he

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examines the logs I am sure that would be proper.

MR. LETTERMAN: All he is asking for is all the logs on the days that Mr. Crowder, through his counsel, will say the program was carried, only those logs.

MR. KENKEL: Yes, only those logs.

MR. BILGER: This is for one program. How many times more are we going through this? I don't know and I don't want to try it piecemeal, inch by inch and find I am supplying a yard.

PRESIDING EXAMINER: Is this going to necessitate Mr. Bilger producing logs in a piecemeal fashion?

MR. KENKEL: If I may show the Examiner, this is the original program showing and I have suggested in order to make it easier on the witness now and I don't need to pursue this question by question cross-examination and also to move this along, simply take this original program showing and out of that I am going to name around eight or nine programs and just tell me the period of time that thees programs were carried on WXXL between August 12 and today or if they were not carried and give me that schedule and then we can move that along.

PRESIDING EXAMINER: Ask the questions and let us see how many are required here.

MR. KENKEL: Again, so we don't move off the present point, what is my brother's answer to my request and then let us have an answer from the Examiner.

MR. BILGER: Well, my brother, I want to hear how many

[Tr. 313]

programs we are talking about.

PRESIDING EXAMINER: All right, let us continue the examining and find out how many logs Mr. Bilger will have to supply.

BY MR. KENKEL:

Q. Do you have the program schedule in front of you, Mr. Crowder? A. Yes, sir.

Q. The program from 10 to 10:30 on Saturday, live, sustaining, hour, Schools in Action. On how many Saturdays since August 13, 1966 has that half hour local sustaining program been carried? A. What time was that now?

Q. 10 to 10:30 a.m. A. That, I don't know. I would have to check. I know they have had some school programs and school kids down there on the air.

MR. LETTERMAN: Your Honor, I don't understand the question in terms of the answer. We are talking about a specific program from 10 to 10:30, and the question as I understood it, is not did you carry a similar program at some time during the day, but did you carry the specific program.

MR. KENKEL: May I let Mr. Letterman pose that question?

PRESIDING EXAMINER: Mr. Kenkel, it is your examination, would you continue, adopting Mr. Letterman's suggesting if necessary?

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MR. BILGER: Why doesn't he give me the list of the programs and perhaps I will supply the schedule as soon as I find out about the programs he is talking about.

PRESIDING EXAMINER: No, this is a different type of a program.

MR. KENKEL: The program, Our Schools in Action, 10 to 10:30, educational, live, sustaining.

THE WITNESS: As I say—

MR. KENKEL: Wait a minute, let me finish. Has that program as proposed here in this schedule been carried on WXXL?

MR. BILGER: Just a moment, as long as we are being so definitive, are we asking now at that time or any time during the week, which is it?

PRESIDING EXAMINER: Let us find out. Did you first ask has it be given at that time? The answer I thought was, "We don't know." Was it given at that time as it was proposed?

THE WITNESS: At that time, I don't remember, as to the title, I doubt if that was the title of the program.

PRESIDING EXAMINER: Was a program of that nature given at any time during the week?

THE WITNESS: Yes, sir. We have given that kind of program.

PRESIDING EXAMINER: Now, continue, Mr. Kenkel.

BY MR. KENKEL:

Q. That kind of program on every Saturday for a half hour? A. Some of the times it would be other days, not every

[Tr. 315]

Q. How many such programs? A. I would have to check the log. I can't remember all that stuff.

Q. Are you talking about two or three occasions that you have carried that type of program on some day during the week? A. I will have to check my logs.

MR. KENKEL: Mr. Bilger, would you supply that information?

MR. BILGER: Give us the list of programs about which you have some question. Perhaps your first suggestion was reasonable. I don't know where we are going.

MR. LETTERMAN: I think that the preliminary question to supplying the information is to get the answer from the witness as to whether he supplies the specific program. If he says no, that obviates the need for the program log. Why don't you go down the list and name the programs? I hope the witness has in mind that we are talking about his proposal for his facilities, WXXL, to operate in Harriman, Tennessee.

MR. BILGER: In 1961.

MR. LETTERMAN: Let me make a point of that, if there are changes, that is proposal as it stands today and as it stood then.

PRESIDING EXAMINER: All right, those are legal arguments.

MR. LETTERMAN: I have my voice up, not because I am trying to stress a point, but because in the past I have been accused of having a dulcet tone and ~~I want to~~ have my words on the record.

[Tr. 316]

BY MR. KENKEL:

Q. Looking at the Saturday proposed program schedule, 1 to 1:15 p.m., agricultural, local, sustaining, County Agent, how many Saturdays since August, 1966 has that program been carried as there proposed? A. County Agent, you mean the live program?

Q. Yes, that is what it says here. A. Not any.

Q. It has not and that hasn't been carried on any other days? A. No, sir.

Q. The proposed program, 3 to 3:30, Saturday afternoon, discussion, live, sustaining, Harriman City Council, on how many Saturdays since August 1966 has that program been carried? A. Not any.

Q. On any other days of the week it has not been carried? A. No, sir.

Q. The program 5 to 5:30, Student of the Week, on how many Saturdays has that been carried? A. I would have to check my log. We have had students down there.

Q. On Saturday, 5 to 5:30? A. I don't remember the time.

MR. LETTERMAN: We are talking about a specific program, a half hour live program. The question is not do you carry some

[Tr. 317]

form of substitute for that program or do you carry the program that you proposed.

PRESIDING EXAMINER: We understand that and the witness answered as I gather, not that particular program, however, students have come to the station and appeared on the station, as I gather. Now, we can follow up on that point if we care to.

MR. KENKEL: Now, the students that have come to the program, how long a program has the student been on?

THE WITNESS: I would have to check the log.

BY MR. KENKEL:

Q. I put it to you that it has not been a half hour. A. I am not around the station all the time the programs are on the air. I am out of town part of the time.

Q. During the times that you were there, has a student been on Saturday afternoon for a half hour under a program known as "Student of the Week"? A. I don't recall but I am inclined to doubt it.

Q. How about the program at 5:30, Sports Today, talk, live commercial, how many Saturdays has that 15 minute program been carried? A. Well, we have Sportscasts, but I doubt if it is that time of the day. I would have to check the log.

Q. Isn't it true that you do not have a 15 minute live commercial program on Saturday or any other day of the week? A. Live commercial?

[Tr. 318]

Q. Yes. A. No, not live commercial, no.

Q. Your sports casts are sports news off the wire, isn't that it? A. Most of it.

Q. Turning to the Sunday proposed schedule, the proposed schedule, 2 to 2:30, half hour program, discussion, live, sustaining, Our Civic Clubs, on how many Sundays has that program been carried? A. Not any.

Q. And it hasn't been carried any other days of the week? A. I don't believe so.

Q. The program at 2:30, Harriman High School Today, live, educational, sustaining, on how many Sundays since August 1966 has that been carried? A. Not any. We have had the band through tape recordings on the air, but not live.

Q. On how many occasions have you had the band on tape recordings? A. I don't remember.

Q. And it hasn't been a regularly scheduled matter? A. No, we checked and they weren't interested.

Q. And the time that you did carry it wasn't for a half hour? A. I don't recall.

Q. Would you agree that at no time did you carry it for a half hour program? A. No, I wouldn't agree to that until I check the log.

MR. KENKEL: Would you check the log, Mr. Bilger, and if it is different, let me know.

MR. BILGER: I am not making that commitment to you.

PRESIDING EXAMINER: We haven't got an answer and as far as I am concerned there is not such a program. Unless it can be shown that a program of substantially similar nature is given at some other time, as far as I am concerned, there is no such program except on a sporadic basis, perhaps.

BY MR. KENKEL:

Q. Going back again to the Monday through Friday schedule, sir, I see that you have in the proposed schedule the half hour program, 2 to 2:30, on Thursday, "Youth Speaks", discussion, live, sustained, on how many Thursdays since August 1966 has that program been carried? A. I would have to check my log.

Q. Have you carried that half hour program "Youth Speaks", discussion, live, sustaining? Have you carried that at all on any days?

MR. BILGER: Mr. Examiner, I want to make a representation, I object to this question and all similar questions for the following reasons. It is perfectly patent that what Mr. Kenkel is doing is asking about a specific program by title and time.

[Tr. 320]

Now, the Commission, as far as I am concerned, if there is a change I am not aware of it, it is not interested in the form over substance. It may well be that the program is carried on a different time and under a different name and the percentages which the Commission at that time in 1961 was interested in are still pertinent.

We are asking a witness, obviously, for his memory, the station has been on the air since August 12, 1966, over eight months.

PRESIDING EXAMINER: The opportunity is given to Mr. Crowder to explain as fully as possible. I want him to have the fullest opportunity to explain if these programs are given, if the precise program isn't given at that particular time, what program in substitution or similar to it is given at any other time.

MR. BILGER: I shall do that at the right time, but at the moment we are having what appears to me to be a test of memory.

PRESIDING EXAMINER: This station has not been on the air for so many years that Mr. Crowder shouldn't have some knowledge of what goes over the station.

MR. LETTERMAN: I submit that the man testified to the fact that he participated on a day by day basis from December, 1966 to the present time after Mr. Scarborough left the station. I don't think this is characterized as a memory contest. He is asking whether this specific program that he proposed to the Commission is carried at any time from August 1966 through the

[Tr. 321]

present.

If he was at the station and had knowledge as the owner of the station of the day to day operation he should be able to answer the questions.

PRESIDING EXAMINER: I can't supply the witness with a memory and I think Mr. Crowder should be able to give us as much information as he can.

THE WITNESS: I am willing to do that, sir.

BY MR. KENKEL:

Q. Now, I understand you have not carried the program, "Youth Speaks" on Thursday, but maybe carried something else, is that right? If I am wrong, tell me. A. If you mean a program of that title, I would say, no.

Q. All right, have you carried on Thursdays or any other day of the week on a regularly scheduled basis a half hour discussion, live, sustaining program with the material of "Youth Speaks"? A. Not a regularly scheduled program, no.

Q. It has not been regularly carried. On how many occasions has it been carried and would you tell us the time duration and the title of the program? A. I can't do that, I am sorry.

Q. You say you can't do it, you don't know?

MR. LETTERMAN: Let us bring it right up to date, how about since February 1, 1967?

THE WITNESS: There has been some youths down there. For

[Tr. 322]

your information, I am not the program director, really. I have seen the kids down there, just as to how long they have been on the air, I would have to check the logs.

BY MR. KENKEL:

Q. Frankly, I dislike, Mr. Crowder, going back, but I am going to give you the chance for the ones I have asked you about. You tell me what is your substitute for the ones that are carried, the day and length of time. A. I can't tell you. I would have to check the logs.

Q. So your answer would be the same. I don't want to take your time and the Examiner's time is going back. A. Yes, I would say it is about the same answer.

Q. When you operated WHBT in Harriman you had an FM permit, did you not? A. Right.

Q. Can you recall when you got the FM construction permit? A. No, sir.

Q. I have here in my hand the Commission's file of WHBT-FM and it shows an application for a construction permit, dated May 4, 1953, signed by F. L. Crowder. A. That is my signature.

Q. And notarized by Walter H. Scarborough. A. He was the sales manager.

Q. And he was also the same individual who you mentioned

[Tr. 323]

was the manager of WXXL until December? A. That is correct.

Q. And stayed with you until the first of January? A. Right.

Q. According to the Commission's files there is a letter from you to the Secretary of the Commission, September 8, 1953, saying, "We think that we will be able to go on the air with our FM station in about 30 days." Signed by F. L. Crowder. A. That is right.

Q. Did you put the FM station on the air? A. Did I put it on the air?

Q. Yes. A. We did. It happened that we had a fire at the transmitter building and messed up the FM transmitter.

Q. How long did the FM station stay on the air? A. I don't recall.

Q. You subsequently turned in your permit for the FM station, did you not? A. I sure did.

Q. I show you a letter dated December 7, 1954 to the Secretary of the Commission from Norman Jorgensen on behalf of the Harriman Broadcasting Company, Inc., you are surrendering the FM permit? A. That is correct.

Q. You authorized your attorney to turn that in?

[Tr. 324]

A. Yes, sir.

Q. So that the FM permit was then turned in? A. Yes, sir.

Q. Mr. Crowder, I am showing you again a copy of an application for an FM construction permit signed by you and dated September 1, 1966, bearing the stamp of the Commission, indicating the date of September 1, 1966, this being received. Can you see that? A. Yes.

Q. Directing your attention, sir, to Table 2 thereof, which is Section II, Page 4, there is the entry of F. L. Crowder, Harriman Billiard Parlor, Harriman, Tennessee, 100 percent owner to the present. A. That is an error.

Q. You signed that application, is there any doubt in your mind that you signed it? A. I signed it.

Q. You reviewed the application before you signed it? A. Yes, sir, I did.

Q. I am showing you the application that is now in hearing which you signed on September 30, 1961, directing your attention to Table 2 and to the entry, F. L. Crowder, Harriman Billiard Parlor, 100 percent owner, 1944 to present. A. I was 100 percent owner in 1944. Now, what is the date of that?

[Tr. 325]

Q. The date of this application is September 30, 1961. A. I was not 100 percent owner at that date, it is an error.

Q. Now, in that same application, that is the one that is now in hearing, dated September 30, 1961, is a balance sheet for F. L. Crowder, Harriman, Tennessee, dated July 31, 1961 and that shows billiard hall equipment, $15,000. A. That is what I considered my share to be worth.

Q. Directing your attention to the balance sheet, I show you the entry "Partnership interests in WLIV." You put that partnership interest for WLIV that way but– A. I didn't do that, the accountant did it.

Q. Would you turn to Section 1, Page 2, this indicates that this was prepared by you and designation 2 is used, is that correct? So, didn't you? A. No, I didn't, it was prepared under my supervision.

Q. I will ask the question and then get your reaction, sir.

Mr. Crowder, I show you again the Commission's Memorandum Opinion and Order released January 14, 1966 granting this application initially and directing your attention to Paragraph 6 thereof, and the Commission's language, "at present he is the owner of a business in Harriman." Did you ever tell the Commission? The Commission as you understand, made the grant on the basis of what it said here. Did you ever tell the Commission

[Tr. 326]

that one of the bases upon which it had made the grant that you were not the owner of the Harriman Billiard Parlor?

MR. BILGER: I object.

MR. KENKEL: My only question is whether he informed the Commission.

PRESIDING EXAMINER: He was the part-owner of the billiard parlor in Harriman. The only question is to the extent of the interest. I don't know if there is any difference.

MR. KENKEL: I think subsequently in the findings we can argue the extent upon which the Commission relied upon the 100 percent showing because it did come up with the pleadings, we can argue at that time the extent of misrepresentation or failure to report to the Commission correctly, but I think for present purposes we are entitled to get into evidence the rather simple question as to whether he informed the Commission.

PRESIDING EXAMINER: The objection to that is sustained because I don't know of any duty to inform the Commission in view of what it said in its January 14th release. It may be that previously Mr. Crowder should have informed the Commission as to his holding in the billiard parlor, but I wouldn't attach any heinous consequences to that. It might be a pure oversight.

I am willing to accept that if that is what it was. But as far as his duty to inform the Commission, as far as the January 14th release, I am sustaining the objection to that point.

[Tr. 327]

MR. KENKEL: We have our exception.

PRESIDING EXAMINER: All right, surely.

MR. KENKEL: I will mention now, if the Examiner will indulge me, as you are aware, this case did go to the Court of Appeals. It was the subject of briefing and argument as to the matters before the Commission, the sufficency of the Commission's finding, I will tell you now that before the Court one of the arguments was the sufficiency of the Commission's finding with respect to the grant, particularly Mr. Crowder's nexus to Harriman.

We will bring that up at that time and ask you to reverse your ruling.

PRESIDING EXAMINER: I don't see the difference in as far as the person's nexus to the community, whether he is a half owner in the business or a whole owner in the business. There may be some distinction there and some degradation in the community because he is only a part owner and against a complete owner, but if so it is so subtle it escapes me at the moment.

MR. KENKEL: Perhaps later will be the time to argue the subtleties.

BY MR. KENKEL:

Q. Before I leave this point, Mr. Crowder, and I make the request to you, but I suppose in line with Mr. Bilger's earlier statement

I had better make it to you both, would you supply me with the list of the commercial spot buyers on WXXL and also

[Tr. 328]

within that list which you have indicated was approximately 25, those who are buying at the rate card and those who are buying at less than rate card which I understand is less than 15. May I have that list?

MR. BILGER: No, sir. I will not supply it unless I am ordered to do so.

PRESIDING EXAMINER: What is the purpose of getting the names of the people? You have the information in the record that 15–I don't know, are on the rate card or are not on the rate card–and 10 are or are not. Is there any need to get the names of these people? The information is in the transcript.

MR. KENKEL: Not right at this moment. If you will apprise me of the number from 25, 15 and 10, as I understand, there are 25 commercial spot buying accounts on WXXL of which 15 you say, buy at rate card basis and 10 at less than rate card basis.

THE WITNESS: I said that was my estimate. I would have to check the log to be sure.

MR. KENKEL: That is what I am asking, that the logs be checked and that I be given the number and for testing purposes I would like the names. I would like the number in both categories. There are only 25, it is not a difficult talk to supply the names.

MR. BILGER: The number nor the amount is the issue here. The issue here is whether WHBT is injured and if so, how and how that relates to the public interest. For me to furnish that, I

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think is ridiculous.

PRESIDING EXAMINER: I am not agoing to require you to do that.

MR. LETTERMAN: Mr. Examiner, under the trafficking issue WHBT has the burden of proceeding, but it would be the Bureau's position that at some time we are going to have to know the names of the advertisers carried by WXXL and through the testimony of Mr. Crowder and Mr. Crossthwait determine whether those advertisers have been advertisers of WHBT, the extent to which they advertised over WHBT and WXXL jointly and matters in connection therewith in order to determine, sir, how much impact WXXL has actually had on the operation of WHBT.

PRESIDING EXAMINER: That is a question or order of proof, now we are going backward. First, WHBT has to show that it has lost advertisers to WXXL, not in the first place to get the advertisers of WXXL.

MR. LETTERMAN: It may be, but however it comes up—

PRESIDING EXAMINER: It has to come up with the proper order. I don't think I should order at this moment that Mr. Bilger has to furnish the names.

MR. LETTERMAN: We just want to establish that at some point in time Mr. Bilger is not going to be stopped from making this showing if he wants to do so because of the refusal of the owner to furnish the names in connection with WHBT's case.

PRESIDING EXAMINER: I am sure Mr. Bilger will consult his

[Tr. 330]

own interests and if it is in the interest of WXXL, he will do so, but I am not going to order him at this moment to do it.

BY MR. KENKEL:

Q. You have told us, Mr. Crowder, that some advertisers buy off the rate card and others buy at a different rate. Now, how do you establish the rate? A. I have already established the rate.

Q. You just give them a figure depending on the advertiser? A. No.

Q. Well, the ten who buy at less than rate card rates, you just gave those ten a figure? A. Some of those advertisers are 20-second spots.

Q. Some of them? How many? A. I would have to check my books.

Q. Is it your testimony that all of the ten that you referred to are 20-second spots? A. No, sir.

Q. How many are? You told me some are, you must have some knowledge of how many are and how many aren't. A. Can I explain to you why we sell at less than the rate card?

Q. I have asked you, sir, how did you determine the rates you charged these ten who are buying at less than rate card rates?

[Tr. 331]

A. We have special deal for non-advertisers who don't believe in radio advertising, trying to get them into radio advertising.

Q. All these ten, then, are the non-advertisers you are trying to get into radio advertising? A. Possibly, I would have to check exactly.

Q. All of those in the non-rate card category are the non-advertisers you are trying to get into advertising? A. They have been. They are now with us on a 13 week introductory offer. They are all informed when the 13 weeks are up if they want to continue they will go to the regular rate.

Q. Do you know that Tennessee Hardware has been a radio advertiser on WHBT? A. No, sir, I don't

Q. You don't know that? A. No.

Q. In talking with Mr. Collins at Tennessee Hardware do you know him? A. I sure do.

Q. In offering him this so-called introductory rate, you haven't discussed that? A. I haven't discussed with Mr. Collins selling radio time.

PRESIDING EXAMINER: The question wasn't finished, was it,

[Tr. 332]

Mr. Kenkel? Will you finish your question?

BY MR. KENKEL:

Q. —have you discussed the fact that he is presently advertising on WHBT? A. No, sir, I haven't.

Q. But you know that someone has, don't you? A. No, I don't. I don't know every advertiser my commercial salesman calls on.

Q. Let me ask you this question, is it your testimony that the only firms, business firms, to which this so-called introductory rate has been offered are those who are not radio advertisers? A. That is my instructions to the salesmen, yes, sir, those people that haven't been advertising for quite a while.

Q. Oh, for quite a while. You give the instructions to your salesmen, sir, what instructions do you give them?

MR. BILGER: We have two questions pending. Which one do you want him to answer?

PRESIDING EXAMINER: I think that is one question. Do you give instructions to your salesmen, Mr. Crowder, when they go out?

THE WITNESS: Occasionally, yes.

BY MR. KENKEL:

Q. What instructions do you give them in this connection? A. I don't know what you are talking about now.

[Tr. 333]

Q. In offering the so-called introductory rate. A. They are instructed to offer the non-advertiser a 13-week special program provided they buy 25 spots per week.

Q. So that would be 25 times 13? A. Correct, that is the special introductory offer that we have.

Q. And you tell your salesmen that this is to be made only to those who haven't advertised for quite a while? A. True.

Q. Do you tell them quite a while or do you fix a period of time? A. No.

Q. My question was, do you just leave it at "quite a while" without any further elaboration or definition? A. Yes.

Q. Do you have any live remotely originated programs on a regularly scheduled basis? A. Nothing but religious programs on Sunday.

Q. They are remotely originated? A. Some of them are.

Q. Which ones? A. As I recall, Kingston Baptist Church, the Reverend Hicks, at 9 on Sunday, is remote.

Q. That originates over in the Kingston Church? A. Yes.

[Tr. 334]

Q. That is the only regularly scheduled remote? A. No, we have a regularly scheduled remote at 11 on Sunday.

Q. Where does that originate from? A. Methodist Church part of the time and Presbyterian the other time.

Q. you have commercial religious programs, don't you? A. Sure.

Q. What rate do you charge for religious programs? A. It is on the card.

Q. Where? Which commercial religious programs do you have? A. We have a 30-minute religious program, usually.

Q. Who is that sold to? A. Hicks is one of them. I can't recall all of the fellows' names. Johnson is one that I recall.

Q. At what rate do you sell it from the card? A. $19.20 for 30 minutes.

Q. That is a 30-minute, 52 time program? A. Right.

Q. How about Lively? A. Reverend Lively is on for 30 minutes.

Q. And his rate is $19.20? A. Right.

Q. Reverend Lively, for example, with what frequency

[Tr. 335]

in his program broadcast? A. Every Sunday.

Q. And you have a year's contract with him? A. Nothing but just a verbal contract.

Q. So there is no commitment for 52 times? A. No, not necessarily.

PRESIDING EXAMINER: What is the answer to that? That is again a negative answer and a negative question. Is there a commitment for 52 times, Mr. Crowder?

THE WITNESS: No, sir. We don't require anybody to sign a contract.

PRESIDING EXAMINER: When you say a "verbal contract" do you mean an oral agreement?

THE WITNESS: Right.

BY MR. KENKEL:

Q. Do you require neither the preacher or the commercial advertisers? A. No.

MR. LETTERMAN: When you charge the rate of $19.20 on the basis of an oral understanding between yourself and the person involved that they will advertise for a 52-week period?

THE WITNESS: Right.

MR. LETTERMAN: There is this oral understanding whether there is a contract or not, is there not?

THE WITNESS: Right.

[Tr. 336]

BY MR. KENKEL:

Q. In every case there is an oral understanding as to the number of programs that will have to be bought to get the rate, I am talking about both preachers and commercial advertisers. A. No, not in every case, I won't say in every case, no.

Q. Who does the programming on WXXL? A. Do you mean the program director?

Q. Yes. A. Mrs. Jenkins is the program director.

Q. How long has she been the program director? A. Since December, I guess.

MR. KENKEL: That concludes my examination, Your Honor. There are a number of items that Mr. Bilger is furnishing me with and I will check the transcript and let you know what they are.

PRESIDING EXAMINER: Mr. Letterman?

MR. KENKEL: Excuse me. I have one more question, I am sorry. If I may, Your Honor.

BY MR. KENKEL:

Q. I am going back again, sir, to the letter you filed with the Commission as an amendment to your application, sworn by you under date of November 18, 1961, directing your attention again to the letter signed by James Harmon, and particularly, the statement, "I am particulary interested in the plans you have discussed with me for giving the people a better understanding

[Tr. 337]

of business and businessmen through special programs that you plan as a public service."

Now, you are aware, are you not, sir, that after this letter was filed Mr. Harmon filed a letter with the Commission telling the Commission that he had never had such conversations with you? A. Correct, he didn't have.

Q. He did not have such conversations?

PRESIDING EXAMINER: Will you answer that Mr. Crowder? You were shaking your head.

THE WITNESS: He did not have the conversations with me, he might have had them with Scarborough.

MR. LETTERMAN: I have an inquiry I would like to make of counsel for WHBT, but as I understand, you said Mr. Letterman. Do you mean that I should proceed at this point in time?

PRESIDING EXAMINER: Do you have any questions?

MR. LETTERMAN: We have a peculiar situation at this time. We have one party with the burden or proceeding and one with the burden of proof, so I would like to reserve my questions until a later time.

I have one matter, a matter was brought up concerning an Anna Sue Burchfield. My inquiry is this, I will not pursue the matter further if WHBT does not plan to produce Mrs. Burchfield for testimony, if they do I think I will have to pursue the matter for questions.

[Tr. 336]

MR. KENKEL: Mrs. Burchfield is on the list of people who we want to take depositions of. Pending the action of the Review Board, as of now, she is on the list, pending the action of the Review Board, for depositions.

It depends on how the Review Board decides. if they sustain we will have to take another look at it.

MR. LETTERMAN: That was simply a matter of clarification.

PRESIDING EXAMINER: Mr. Bilger, have you any questions of Mr. Crowder now?

MR. BILGER: Before I answer that, based on what Mr. Letterman said, I don't remember the evidence elicited from this witness regarding Mrs. Burchfield. If that woman is not produced the transcript indicates that such conclusions would be subject to a motion to strike.

MR. KENKEL: That statement means absolutely nothing. I don't think I am forced to answer that.

MR. BILGER: Now, with respect to Mr. Crowder, the burden of going forward the and burden of proof is on WHBT. It seems to me I have a choice. I can ask him questions in rebuttal or the latter, so I think I will ask him nothing now on the predicate that I have a direct case which will rebut the case of Mr. Kenkel.

PRESIDING EXAMINER: I would call it a reply. Your direct case would be in reply. Mr. Kenkel would be rebutting to you.

MR. BILGER: But he has a witness under adverse conditions.

[Tr. 339]

So, I think the point is, I certainly have many questions, but I think I can elicit them under my direct procedure.

MR. KENKEL: We have called this witness and have been entitled to examine him as an adverse, hostile witness. It is my position that if at some subsequent date Mr. Bilger calls Mr. Crowder he will be limited to direct and will not be permitted to go into areas which might be in the way of reverse cross-examination of the matters we brought out today.

I think that is a matter of principle, but also a matter of fairness unless we are going to establish the rule that you are entitled to read the transcript and go back and bring the witness in formal turn.

MR. LETTERMAN: When we have a case like this it is true that the party has been shown to be or perhaps under the rules is considered to be an adverse witness and you are allowed to be leading in your questions in the examination of the witness.

Now, when Mr. Bilger takes him back for the direct presentation he is not under the same handicap. In other words, he can confer with the principal and decide on the course of the testimony to take so that he can elicit the answer to the question that he might have on direct without any impediment such as might be in the way of counsel for the opposing party.

MR. KENKEL: He will be on direct.

PRESIDING EXAMINER: He is on direct examination, obviously, there is not question that Mr. Crowder is not an adverse witness

[Tr. 340]

to Mr. Bilger. He will not be able to ask him leading questions. I will have to rule upon specific questions as they are asked, whether they are beyond what you should consider the scope or if that rule should be invoked.

MR. BILGER: The scope of my witness depends on my direct case.

PRESIDING EXAMINER: Of course, that is as I view it.

MR. LETTERMAN: I agree. I think that counsel for Mr. Crowder, WXXL, should have full recourse to direct his case on direct examination to the extent he feels he should do so.

PRESIDING EXAMINER: Of course, he has the burden of proof on the trafficking issue.

MR. BILGER: May Mr. Crowder be excused?

PRESIDING EXAMINER: Now, that is a question. Mr. Kenkel was saying something about having to examine Mr. Crowder on the basis of the information that is to be furnished by you, Mr. Bilger. What should I say? Mr. Crowder is at least temporarily excused.

MR. BILGER: He is up here under subpoena on a perdiem basis. I don't know how long Mr. Kenkel wants to pay him.

PRESIDING EXAMINER: What is the situation, Mr. Kenkel?

MR. KENKEL: In about two or three minutes the meter flag goes up. However, I am saying that on the promise of the witness to furnish information to me and additional information that counsel is saying is coming.

[Tr. 341]

PRESIDING EXAMINER: Then Mr. Crowder may be excused, is that it?

MR. KENKEL: Yes, on the conditions of the promises that have been made.

PRESIDING EXAMINER: All right, on those conditions, Mr. Crowder is excused.

MR. BILGER: I take it now the money stops.

MR. LETTERMAN: I want to be sure about one thing. Before you excuse him, may I ask this question of counsel and I will direct it through Your Honor, will Mr. Crowder be back here for further examination by Mr. Bilger?

PRESIDING EXAMINER: Mr. Bilger, what is the situation there? It is Mr. Bilger's case after all.

MR. LETTERMAN: That is right, I want to know. I do have a few questions and I want to preserve my turn. I made an assumption and maybe it is a false assumption that Mr. Crowder will be here for direct presentation. Am I wrong?

MR. BILGER: Are your questions multitudinous? Can you ask them now?

MR. LETTERMAN: I can ask them now, but I may have some further questions to ask as a result of your direct case.

MR. BILGER: As I have been saying at every prehearing conference, I don't know what I will do until Mr. Kenkel, on behalf of Folkways, is finished. If I don't think he meets it I may have nothing. He has the burden of going forward with

[Tr. 342]

the traffic issue. If I decide he doesn't go far enough I may decide not to say a word.

MR. LETTERMAN: I am pointing out that the order of designation is very split up. That is, the burden of proceeding under the trafficking issue is upon WHBT, but the burden of proof is upon WXXL, the applicant.

MR. BILGER: I thought I just said that.

MR. LETTERMAN: I don't think so.

MR. BILGER: If I didn't, I adopt your statement. But, the possibility may be that I may not put on any evidence.

PRESIDING EXAMINER: That is up to Mr. Bilger, of course. Now, what is your situation, Mr. Letterman?

MR. BILGER: That is, except for official notice.

MR. LETTERMAN: I think under the circumstances I should at least get one item cleared up about the photograph.

PRESIDING EXAMINER: All right.

MR. LETTERMAN: I guess you had better have him take the stand.

PRESIDING EXAMINER: All right. Mr. Crowder, would you take the stand again, please?

Whereupon,

FREEMAN L. CROWDER

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

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CROSS-EXAMINATION

BY MR. LETTERMAN:

Q. Mr. Crowder, I would like to ask you a few questions about the time during which you lived in Livingston, Tennessee, is that the name of the town or city? A. Correct.

Q. Did you buy this particular lot on which was the house that you eventually lived in 1956? A. Yes, sir.

Q. In Livingston? A. Yes, sir.

Q. Did you move into that house in 1956? A. Well, part of the time, yes, sir.

Q. What do you mean by part of the time? A. We spend the night in that house, Tuesday through Thursday, three nights a week, the rest of the time in Harriman.

Q. I take it that you have a home in Harriman, also? A. Right.

Q. Now, the home that you have in Livingston, you lived in from 1956 until what time or do you still own it? A. No, I don't own it. I sold it.

Q. When did you sell it? A. I don't remember.

Q. Do you remember the year?

PRESIDING EXAMINER: You are talking about the Livingston

[Tr. 344]

house?

THE WITNESS: Frankly, I don't remember the year. Can I explain why I bought the house?

MR. LETTERMAN: Not right now.

BY MR. LETTERMAN:

Q. You don't remember when you sold it. Can you give us an approximate date? Was it 1965 or '64? A. Frankly, I don't believe I kept the house over a couple of years. I would have to check the records.

Q. When you said that Mr. Scarborough sent you the copies of the letters to Livingston, the letters submitted to the Commission in 1961, where were you living in 1961, in Livingston? A. No, sir. I was living in Harriman, but I spend Monday nights through Thursday nights in Livingston.

Q. Where? A. In the apartment I built in the bottling plant.

Q. So the times you were in Livingston were not necessarily the same times that you lived in this house? A. No, sir.

PRESIDING EXAMINER: You mean that is right. When we get a negative answer to a negative question we understand, but somebody else may not.

THE WITNESS: I lived in the apartment after I sold the house. I was there, as I say, Monday nights through Thursday nights. I would always go to Harriman on Fridays and back to

[Tr. 345]

Livingston on Monday.

BY MR. LETTERMAN:

Q. And you have an apartment in the bottling plant? A. Right.

Q. And you used that during the time of the week you mentioned? A. Yes, I did. I don't any more

Q. You had a home in Harriman? A. Right.

Q. You live now in Harriman, is that right? A. I have lived in Harriman for 35 years.

Q. You had a home in Harriman during the same time you lived in Livingston? A. Correct.

PRESIDING EXAMINER: Where have you been voting all this time?

THE WITNESS: Harriman, Tennessee, for 35 years.

BY MR. LETTERMAN:

Q. I just want to clear up a point about this photograph. When you said that you built an addition to the house in Livingston, referring to WHBT-2H and 2-B, could you be more explicit in telling us what you built? A. This is the garage. I built the garage after I bought it.

PRESIDING EXAMINER: Pointing to the right side of

[Tr. 346]

the photograph, beyond what would be called the window to the living room?

THE WITNESS: Correct.

BY MR. LETTERMAN:

Q. So that portion of the house you constructed after you purchased it? A. Right.

Q. During the course of your examination you were asked about the employment of one Anna Sue Burchfield, do you recall that? That was during the course of examination by counsel for WHBT, you were asked about the employment of one Anna Sue Burchfield, do you recall that? A. Yes, I made the statement that Mr. Scarborough employed her.

Q. Yes. And she was employed by the station for about four weeks? A. That is the way I remember it.

Q. Now, I am not clear on the conversation that you had with Mrs. Burchfield concerning the acquisition concerning the business from the insurance agent. Do you recall what you said to her concerning the business from the insurance agency, if you told her anything? A. I told her she would be able to sell Mr. Arnold because I was a good customer of his. I didn't tell her to pressure him.

[Tr. 347]

Q. That was the total extent of the business? A. Right.

Q. You didn't say "Tell Arnold you are getting good business from Mr. Crowder and because of that and the fact that his policy is coming up for renewal it would be a good idea if you advertised over his station."? A. No, I didn't tell her that.

Q. Nothing along those lines? A. No, sir.

Q. In connection with the sale of the stations which have been mentioned certain figures were given, the original cost figure and the figure of the evaluation at the time of the sale and I believe, sir, that you stated that these figures were supplied to you by your accountant, is that correct. A. That is correct.

Q. In each case in which he sold the station you utilized figures supplied to you by your accountant, is that correct? A. Correct.

Q. Could you give us some further information about these values as shown, where they reflected the appreciated value of the assets or could you give us information about how these values were arrived at or would you need to go to your books to do that? A. I would have to go to the books.

Q. Mr. Crowder, I just want to go back and briefly touch

[Tr. 348]

on the three stations involved, just so that I am absolutely sure. The three stations of which you at one time held an interest or owned that were involved in subsequent sales were WHBT for one? A. Right.

Q. WDEH for the second and WLIV for the third? A. Right.

Q. And those were the only stations which you owned or held an interest in which you subsequently sold, is that correct? A. That is correct.

Q. When you said that the information set forth in the application form concerning the sale of the station, the reasons for selling the station, specifically, I believe that you said in part of your testimony that these reasons were framed or set out in the application form by your attorney at the time, is that correct? A. He and I discussed it, yes.

Q. But when you signed the application, in effect you adopted those reasons for yourself, did you not? A. Correct.

Q. So that it could clearly be stated now that at the time they were filed they represented what you felt or believed to be the reasons for sale of the stations. A. As I recall, my reasons were that I wanted to get out of the radio broadcasting business.

[Tr. 349]

Q. You adopted those statements as being representations to the Commission as to the reasons you had for disposing of the station at that point in time, did you not? A. Correct.

MR. LETTERMAN: Your Honor, I believe that is all that I have based on what I have so far. I do believe this, that there has been a reference to a number of applications concerning the sale of these stations. It may be that the Bureau would like to have reproductions of portions of those applications which have been testified to for the purpose of having the Examiner take official notice of the particlular aspects of the application so that we will have a better record of the dates involved and the statements that are actually said. So I would like to reserve for the Broadcast Bureau the opportunity to have those sections of the applications which are the subject matter of his testimony today reproduced and presented to the parties and to the Examiner for the purpose of having official notice if we deemed it would be advisable to do so.

With that reservation we would not have any further examination of Mr. Crowder.

PRESIDING EXAMINER: I welcome that for the record, Mr. Letterman, if you feel that it is imporrant, I certainly would like that.

Mr. Kenkel?

MR. KENKEL: Mr. Letterman's questions brought up a few

[Tr. 350]

more on my part.

MR. BILGER: Before he starts. I anticipated something like that. The ball is bouncing back and forth. I think we ought to get the ground rules first. He examined my witness all day and Mr. Letterman had a few questions and now he wants to start again. He has had his bite at the apple and the fact that Mr. Letterman has asked a few questions doesn't give him the right to call him back.

PRESIDING EXAMINER: The fact that I said "excused"–I didn't know that Mr. Letterman was going to ask anything. Had I not mentioned that word there would be no question that Mr. Letterman could ask any questions.

BY MR. KENKEL:

Q. The house that you and Mrs. Crowder purchased in Livingston, that was furnished, wasn't it? A. No, sir.

Q. It wasn't furnished? A. Maybe a couple of rooms and a kitchen.

Q. You have furniture in there and built a garage and it was livable? A. Some furniture.

Q. In fact you did live there from Monday through Thursday, didn't you? A. Yes, sir.

Q. The apartment, similarly, the apartment that you built over the bottling plant was furnished and you could live and in fact did live there Mondays through Thursdays? A. Right.

[Tr. 351]

Q. And you did this so that you could be near your activities in Livingston? A. Correct.

Q. You did that so you wouldn't have to drive back to Harriman? A. That is correct.

Q. And on the questions of reasons for the sales of these stations, isn't it true, sir, that in the sales which have been approved by the Commission, WDEH, WHBT and subsequently, your interests in WLIV, in one of those applications you told the Commission that you were sick and because you were sick you wanted to get out of the broadcasting business? A. That is correct.

Q. As the reasons given for selling stations, I put it to you, sir, that the reason you sold the station here involved was in furtherance of a plan you had previously adopted and in fact discussed with Mr. Harry Burn was that the way to make money in radio stations was not by operating radio stations, but by building the ratings up and selling them, was that not the reason? A. I deny that 100 percent.

MR. KENKEL: That is all.

[Tr. 352]

PRESIDING EXAMINER: May Mr. Crowder be excused?

BY MR. KENKEL:

Q. Do you deny making that statement, Mr. Crowder? A. I do.

MR. BILGER: I want to hear that answer.

PRESIDING EXAMINER: The answer is that he denies it 100 percent.

Now, Mr. Crowder is excused on the same basis.

MR. BILGER: The last question, I think, went way beyond what Mr. Letterman asked.

PRESIDING EXAMINER: Yes, that is true, there is no question of that.

MR. KENKEL: There was no objection.

MR. BILGER: The point I am making, however, just to educate me in proceeding in the future, suppose this raised a new point and Mr. Letterman wanted to ask again.

PRESIDING EXAMINER: Let us not conjure up all sorts of matters. I will rule on that as it comes up.

MR. BILGER: We have a bouncing ball here.

PRESIDING EXAMINER: No, this is not schuttlecock. We will see what happens as it arises.

MR. LETTERMAN: I would like to have a statement from counsel as to the witnesses that he intends to call tomorrow and the general subject matter of their testimony so that I can perhaps be a little more prepared for examination.

[Tr. 1480]

PRESIDING EXAMINER: Yes.

BY MR. BILGER:

Q. I show you, Mr. Crowder, Broadcast License File of the Commission for Station WLIV, Livingston, Tennessee, and direct your attention to what is entitled "Agreement not to compete," which is a part of the application, "whereby F. L. Crowder sold his interest in that radio station to R. H. McCoin," and I direct your attention further to the sixth paragraph thereof and more specifically to what appears to be a stricken phrase in that paragraph. A. I recall the phrase.

Q. All right. Can you explain, Mr. Crowder, why that phrase was stricken and who struck it from that document? A. Mr. McCoin struck it from the document. I wouldn't sign the document unless he would mark that out.

MR. BILGER: For the record, the stricken phraseology is: "and for the further"—Well, let me read, instead, the entire paragraph to put it in context: "Now, therefore, F. L. Crowder, for and in consideration of the sum of $10 and other good and valuable considerations, the receipt whereof is hereby acknowledge"—and from here on is the stricken phrase—"and for the further considerations and in order to induce the said R. H. McCoin to purchase my interest in the above referred-to enterprise," and now that part was stricken within the commas, and the last sentence is not stricken, which is:

[Tr. 1481]

"I hereby irrevocably covenant and agree as follows," colon.

That is the complete paragraph with the stricken material.

BY MR. BILGER:

Q. Now, why was that stricken?

MR. KENKEL: I am going to object.

PRESIDING EXAMINER: On what ground, Mr. Kenkel? It is on the parol-evidence rule.

MR. KENKEL: Yes; he said it was struck by Mr. McCoin.

PRESIDING EXAMINER: You are not in a position to raise the parol-evidence rule in any event. It can only be raised by the persons to the instrument, and he can certainly explain the situation here.

MR. BILGER: Is the objection overruled?

PRESIDING EXAMINER: Yes.

BY MR. BILGER:

Q. Explain why it was stricken. A. My brother-in-law wanted me to sign an agreement not to compete.

Q. Your brother-in-law is R. H. McCoin? A. That is right, and I wouldn't sign the agreement with the phrasing which was not true anyway.

PRESIDING EXAMINER: What do you mean, it was not true?

THE WITNESS: It says: "and for the further consideration and in order to induce the said R. H. McCoin to purchase my interest." I didn't want to sell in the first place.

[Tr. 1482]

PRESIDING EXAMINER: I see; all right. Now, there was, in other words, no covenant not to compete?

MR. BILGER: None at all.

PRESIDING EXAMINER: I see, but because the portion was stopped there and then there was mention of a covenant—it says, "covenant as follows," colon—and that portion was not stricken but apparently nothing appears thereafter.

MR. BILGER: I want to correct that I said, "Not at all," and I am wrong. The witness testified in two parts here, of course, and of course the record will speak for itself, but he objected to the inducement phraseology.

PRESIDING EXAMINER: Yes.

MR. BILGER: There is a covenant not to compete following: "I will not, from and after the execution of this agreement and the sale agreement any time for a period of eight years" and so forth "alone or jointly, with or as agent for any person or persons, either directly or indirectly, set up an enterprise to engage or employ an interest in a radio station within a radius of 35 miles from Livingston."

BY MR. BILGER:

Q. How far is Harriman from Livingston? A. You mean air miles or railroad?

Q. Air miles. A. I would say 60 miles.

Q. And how far, road miles?

[Tr. 1483]

A. Seventy-five.

MR. BILGER: Does that clarify it?

– PRESIDING EXAMINER: Yes.

BY MR. BILGER:

Q. Mr. Crowder, do you have before you or can you get from your papers there what is Crowder Exhibit 33; that is, your prior broadcast interests? A. Right.

Q. You have that? A. Yes, sir.

Q. Now referring to WDEH, Sweetwater, Tennessee, you acquired that station, did you not, June—that is, you applied for construction permit in June, '54? A. Right.

Q. At which time you still owned WHBT? A. Right.

Q. There came a time you sold WDEH? A. Right.

Q. September, 1965? A. Right.

Q. Why did you sell it? A. It will tell you on the form—I don't remember the number—to transfer the license; I wanted to get out of radio business.

Q. Why did you want to get out of radio?

[Tr. 1484]

A. May I go back to the time we went on the air?

Q. Yes, indeed. A. Well, sir, I hired a gentleman, as I recall his name was Lee, as sales manager of the radio station.

Q. Which one? A. WDEH. I will have to say he did a good job before we went on the air; he did a good selling job before we went on the air; the billings were about $5,000 a month, but in about three or four weeks I noted we started losing customers; he quit the advertising business and, naturally, I checked to see what the trouble was and I learned the gentleman was more interested in the secretary than the radio station, so I had to dismiss him.

I in turn employed another gentleman and he was all right for two or three weeks but then he got involved in local politics. Anyway, unbeknownst to me, he took sides, opposed the City officials. We lost some more customers.

The station kept going down, going down. So in about three months, frankly I was a nervous wreck. I decided to sell my radio station and get out of the radio business.

PRESIDING EXAMINER: We are still talking of WDEH?

THE WITNESS: That is correct.

PRESIDING EXAMINER: I see. All right.

BY MR. BILGER:

Q. You sold WHBT and WDEH in the same year, did you?

[Tr. 1485]

A. That is right.

Q. 1956? A. Yes.

Q. Now, there came a time when you acquired a 50-percent interest in WLIV in Livingston? A. That is right.

Q. Why did you acquire that interest? A. Can I tell this in my own way?

Q. I think so. A. What happened, my brother-in-law was a car dealer in Livingston and sold the business in 1955.

Q. This is R. H. McCoin? A. That is right. For some reason he decided he wanted to go into radio, get a radio station in Livingston, and he came to see me and wanted to form a partnership. I refused. I told him I was, rather than getting in the radio business, I wanted to get out. So about the third time he came he said, "Look, I don't know a thing about the procedure to get a construction permit. I got to have some help. If you will be a 50-percent partner with me, I would appreciate it."

I agreed to under one condition, that I would put the station on the air, so to speak, and after that I was through, because—or in an advisory capacity in case he needed advice.

Q. All right, sir, looking at the period from the time that you agreed to assist Mr. McCoin, up until the station went

[Tr. 1486]

on the air, and by that I assume you mean programming regularly? A. Yes, sir. That is right.

Q. What did you do in terms of— A. I employed consultant engineers and attorneys and purchased the equipment, the office equipment, assisted in getting on the air and I was through.

Q. What, if anything, did you do after the station went on the air until the time you sold your interests in WLIV to Mr. McCoin? A. Just give him some advice occasionally, that is all. That is, when he asked for it.

Q. Were there occasions when you visited the station itself? A. Yes, I visited it occasionally.

Q. How frequently were those visits, or how frequent were those visits? A. I would say for the first year, maybe once a week. After that, maybe I would average once a month, and sometimes I wouldn't be around the place for three or four months in the busy season at the bottling plant particularly.

Q. Did you at any time during the period you had an interest in WLIV issue any instructions to employees? A. Not one instruction; no instructions. I didn't sign any forms, any checks, nothing.

[Tr. 1487]

Q. Did you have anything to do in connection with the reports and applications filed on behalf of the licensee of WLIV with the Commission? A. No, I didn't. Frankly, I didn't know he was still listing me as general manager, either.

Q. There has been some testimony on the record, Mr. Crowder, about a residence or a house which you owned in Livingston. Do you recall that residence? A. Yes; I owned the house for, the best I remember, three years.

Q. Tell us when you bought, if you can. A. The latter part of '56, I believe, or January, '57; I don't remember the exact date.

Q. I think that is close enough. Why did you buy the house? A. At that time I intended to move my family to Livingston.

Q. From where? A. From Harriman.

Q. Why did you intend to move your family to Livingston? A. In '56 I purchased this bottling plant.

Q. Where? A. In Livingston.

Q. All right. A. I felt maybe it would be better if I just moved there

[Tr. 1488]

rather than drive back and forth or stay at the motel.

Q. Well, did you move to Livingston? A. No, I didn't move to Livingston. My wife changed my mind.

Q. Your wife changed your mind? A. Yes.

Q. You wanted to stay, then, in Harriman? A. Yes.

Q. Are you still in Harriman? A. Yes, sir; I have been a legal resident of Harriman since 1935.

Q. Did the purchase of the house we are talking about have anything to do with your ownership interest in Station WLIV? A. None whatsoever.

Q. During the time that you spent in Livingston, Tennessee, speaking now specifically of course still about the period where you had an ownership interest in the Livingston station, during that period of time when you were in Livingston, other than the times you testified you visited the radio station, what were you doing in Livingston? A. Well, during this period, luckily, the bottling business was growing and it just grew so fast we had to enlarge the plant from 5,000 square feet to 25,000 square feet. So I was around there quite a bit, seeing to its construction going on.

[Tr. 1489]

Q. Supervising the construction? A. Right, more or less. Of course, I had a foreman and a crew. As to the plant operations, I had a plant manager. He was there when I bought the plant. I have had a plant manager from then until today.

Q. I refer you now, Mr. Crowder, to a transcript in the hearing under date of May 8, 1967, wherein you were called as an adverse witness by Folkways Broadcasting, specifically to page 253, wherein this colloquy occurred:

"By Mr. Kenkel"—and to place this in context, Mr. Kenkel is inquiring about conversations Mr. Marshall of the brokerage firm may or may not have had with Mr. Crowder—"By Mr. Kenkel: Question: You did have a discussion with him? Answer: Well, not as far as I was concerned on selling the station. No, I didn't want to sell the station. I didn't want to sell my share of the station. Question: You subsequently did sell your share of the station, did you not? Answer: Yes, sir, I did. Do you want to know the reason? Bilger: Wait, Mr. Crowder, I will get a chance with you."

Now I have my chance, Mr. Crowder, and I ask you if you want to explain now why you sold your share in WLIV? A. Yes, I will explain.

Q. Go ahead. A. My brother-in-law came to me and said he wanted to dissolve the corporation—not the corporation, but the

[Tr. 1490]

partnership.

MR. KENKEL: The record reflects your brother-in-law is dead.

PRESIDING EXAMINER: You are not in a position to raise the dead-man's rule in this case, Mr. Kenkel, any more than the parol-evidence rule.

BY MR. BILGER:

Q. Continue. A. He made an offer of $50,000 to buy or sell. I sold. This is just how simple it was. I didn't want to be the owner of two stations, because I was hoping to build one in Harriman, which I did. I went through it once and I don't like to have this type of ownership.

Q. You are referring now to the only time in your broadcast history when you owned WDEH and WHBT simultaneously? A. That is correct.

MR. BILGER: If the Examiner please, I can't proceed much faster because I am trying to find places in the record.

PRESIDING EXAMINER: That is all right.

BY MR. BILGER:

Q. Yes, Mr. Crowder, do you recall the examination of you by Mr. Kenkel wherein you were asked about the prices used at WXXL to sell commercial time? A. Yes, the rates.

Q. The rates, that is right.

[Tr. 1493]

A. Well, I need a place to sleep when I go to Livingston.

Q. Was it in connection with your activities in Livingston? A. Sure.

Q. Which activities? A. The bottling company.

Q. Does it have anything at all to do with your ownership in WLIV? A. No. No.

Q. You were present in the hearing room during the testimony of a man named Harry T. Burn, were you not? A. I certainly was, and I was amazed.

MR. KENKEL: I ask it go out.

PRESIDING EXAMINER: That goes out; "I was amazed" is stricken.

BY MR. BILGER:

Q. You were present when Mr. Burn testified? A. Right.

Q. Do you recall his testimony wherein he spoke of you having rented a building or a room from his bank in Rockwood? A. Yes, sir.

Q. Would you explain, did you so rent a studio over there? A. Yes.

Q. Meaning in Rockwood?

[Tr. 1494]

A. I did.

Q. Would you tell us when this occurred and the circumstances? A. The best I recall, it was 1953, remote studio for WHBT in Harriman.

Q. And how long did you keep the studio? A. The least was for a period of three years, the best I remember.

Q. Was the lease still in existence when you sold? A. When I sold WHBT, yes, sir.

Q. That was sold along with the rest of it, is that correct? A. Correct; true.

Q. Did you, at the time you leased the building, know Mr. Burn—lease the studios, that is? A. Yes, I knew him when I saw him.

Q. Right. Would you describe your relationship with Mr. Burn at that time and up to now? A. Mr. Bilger, I have had two business dealings with Mr. Burn in my life. That was in '53 when I signed the lease for the studios and in 19—I mean 1961, when Mr. Crosthwait called me to the Rockwood bank, he wanted to get that note I held on WHBT, and that is my business dealings with Mr. Burn, and Mr. Burn is not a friend of mine. He is not my banker. We don't attend the same church. Politically, we are on

[Tr. 1495]

different sides of the fence.

When I was called to the bank that day, that is the first time I had seen the man in five years.

Q. By "that day," which day do you refer to? A. The day they paid off the notes in '61.

Q. As long as we are on the note now, let me ask you, sir, what were the circumstances of Mr. Burn's purchase of that note— A. I suppose—

Q. No, no; just what you know. You held the note, did you not? A. That is right. Let me explain.

Q. All right. A. When the Folkways Broadcasting Company gave me this $70,000 note for the balance due on WHBT—

Q. Let me interject one thought. Folkways Broadcasting Company, at the time you sold, was composed of what, who? A. Mr. Snow, Mr. Kub, and Mr. McDaniel. Those are the three.

Q. Those three only? A. There is a clause in their contract, or their agreement was that they were to pay $10,000 a year, plus interest. Also there was a part of the agreement that was if and when they wanted to pay off the full amount of the note, they had that right to do so.

[Tr. 1496]

Q. All right, when was—

PRESIDING EXAMINER: And they could do so before the due date of the note?

THE WITNESS: (Nodding.)

PRESIDING EXAMINER: The answer is "Yes"?

THE WITNESS: Yes. When Mr. Crosthwait called me to meet him in Rockwood to pay off the note. That is why I met him; they had the right to pay off the note.

MR. LETTERMAN: I have one question, Mr. Crowder. At the time of the sale, could we just have for the record right now what was the total purchase price?

THE WITNESS: $80,000. $10,000 down and $70,000 balance, and they were to pay $10,000 a year, plus interest.

MR. LETTERMAN: Was it a single note or series of notes?

THE WITNESS: Single note.

BY MR. BILGER:

Q. We are talking about WHBT, are we not? A. Right.

Q. When did you acquire the note, generally speaking? In other words, when did you sell WHBT? A. Best I remember, it was July 1, '56, when the deal was completed. That is the day I got the note.

Q. When did Mr. Crosthwait call you—within a month or so, to come to get the note paid off? A. The best I remember, it was April or May, 1961.

[Tr. 1497]

Q. All right. Now, between those dates, 1956 to 1961, did you at any time attempt, or rather talk to Mr. Burn about discount-ing or selling the note? A. No, I didn't. As I stated before, from 1956 for five years I didn't even see Mr. Burn.

Q. Now, after Mr. Crosthwait called you about the note, what happened then regarding the note? What did you do? A. I did what he asked—went to the bank at Rockwood.

Q. Who met him at the bank? A. I met him at the bank with the note.

Q. All right, who was at the bank? A. Mr. Crosthwait, Mr. Harry Burn, and Mr. Floyd Hutchinson, an attorney.

Q. Which bank did you meet him at? A. Rockwood First National Bank and Trust Company.

Q. What happened at that meeting? A. Mr. Burn gave me a check for the balance, which was about $23,000, the best I remember. It was the balance on the note. He asked me if I would endorse it, and I said, "Yes, under one condition." You know what it was; I said, "Without recourse; that is the only way I will endorse it."

That is what I did.

Q. Now, was there any conversation at that time with Mr. Burn regarding your activities in the radio business? A. Not at that time or any other time.

[Tr. 1498]

PRESIDING EXAMINER: Would you direct Mr. Crowder's attention to the specific statement of Mr. Burn.

MR. BILGER: Yes.

PRESIDING EXAMINER: All right. I didn't mean to interfere.

MR. BILGER: That is all right. I not only do not resent it but I thank you for the guidance.

PRESIDING EXAMINER: All right.

BY MR. BILGER:

Q. Now, Mr. Crowder, I want to show you a copy of transcript, Volume 7, dated May 9, '67, in this proceeding, wherein Mr. Kenkel is inquiring of Mr. Burn, specifically page 378:

"Question: Did you have occasion on other occasions to have a conversation with Mr. Crowder concerning radio broadcasting with particular respect to the economic aspects thereof?

"Answer: I saw him in our building every few days and visited with him occasionally, more socially than business, of course, but I kept contacts with him.

"Question: Now directing your attention, sir, to a subsequent year, did there come an occasion when you had a conversation with Mr. Crowder concerning radio broadcasting?

"Answer: Well, about 10 years ago, some financial interests from McMinnville, Tennessee—and that is in middle Tennessee, about 100 miles west of Rockwood—and they came into the Rockwood picture and obtained a license ultimately, of

[Tr. 1499]

course maybe a building permit first, and they started a radio station now known as WRKH; Rockwood, McMinnville, and Harriman, WRKH; and about that time it became known that Mr. Crowder was either selling or negotiations had some existent status, was selling WHBT, and I believe the new station at Sweetwater, Tennessee, he put in, WDEH, I think are the call letters; and I, in a conversation with Mr. Crowder, told him I still—well, I am about to get into my opinion again—that I regretted seeing another station come into Rockwood, because of the factors that I had already discussed with him, that I had not changed my judgment; and his comment on that was that he had learned the hard way that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, by implication anyway, you had to, to do it, through a subsidy, and then selling the station.

"That was the reason he was not concerned with local competition. He didn't propose to operate a station anyway other than until the time he could sell it."

Did you have such a conversation with Mr. Burn? A. I did not. As a matter of fact, WRKH was built after I sold WDEH and WHBT. Check the records. He never mentioned WRKH to me in his life.

Q. I don't know if the record is clear on this or not. How frequently, since 1956, have you spoken with Mr. Burn?

[Tr. 1500]

A. Mr. Bilger, as I told you a few minutes ago, from 1956 to the day I met Mr. Crosthwait in Rockwood was the first time I had seen the man in five years.

Q. Now, after you met him in Rockwood when he bought the note about which you talked, up until today, have you had any conversations with Mr. Burn? A. I have not. No, sir. As a matter of fact, I have seen the man twice since 1961, and once was at a political meeting in Harriman I spoke to him, just "Howdy, Mr. Burn," and that was it. The other time was in this room.

PRESIDING EXAMINER: His statement that he tried to keep up his contacts with you—and I am paraphrasing—what about that?

THE WITNESS: I don't know anything about any contacts, your Honor. As I say, Mr. Burn is not a friend of mine and had no reason to contact me.

PRESIDING EXAMINER: I see. You say—and I don't want to pry into your questioning, this question of political deals or anything—but you mentioned something about being on different sides of the political fence, and I am paraphrasing again, but you were at the same political meeting?

THE WITNESS: Yes, I guess you would call it a political meeting. As I recall, it was the Governor of the State and the Senior Senator from Tennessee, and I do remember it was in Harriman, but I don't recall what it was all about. I do

[Tr. 1501]

remember it was in Harriman.

PRESIDING EXAMINER: Apparently it was not a rally confined to one party?

THE WITNESS: Yes, some special occasion in Harriman.

PRESIDING EXAMINER: I see; I just wanted to have that cleared up.

BY MR. BILGER:

Q. I refer you now, Mr. Crowder, to page 380 of the same transcript volume from which I just read a few moments ago, and picking up from where I asked you the question, Mr. Kenkel now is continuing to inquire of Mr. Burn, and this colloquy takes place immediately after the answer I read into the record before.

"Question: Do you recall the place?

"Answer: I naturally had a lot of conversations with him, and I think it was in the front lobby of the bank, the main office of the bank.

"Question: You place it about 10 years ago?

"Answer: Yes, about 10 years ago this spring."

Now I am going to cease quoting and read the questions and answers as a predicate for what follows. I already asked Mr. Crowder about the conversation I just referred to here. Now I pick up the transcript again.

"Question: Now, sir, were there other occasions when you discussed radio business and radio economics with Mr. Crowder?

[Tr. 1502]

"Answer: Well, we had conversations of a general nature, particularly after he filed an application for what is now WXXL. He had told me in his previous conversations the McMinnville was virgin territory, a small town that had no station, to get you a license and franchise and, as I say, build it up.

"Well, when I bought the note on WHBT, I presumed that was the purpose of the financing, was to go into some other territory, because I was somewhat flabbergasted, when he, in a few weeks, filed an application for a station to compete with the very station on which he had sold me the notes that had the lien.

"Mr. Bilger: I object.

"Presiding Examiner: Yes. Do you move to strike?

"Mr. Bilger: I do."

Then after that, "I was flabbergasted" was stricken.

Now, the conversations of a general nature about which Mr. Burn spoke, did they occur? A. Mr. Bilger, McMinnville, Tennessee, has two radio stations, as a matter of fact, I believe if you check the record, you will find that one of the stations was constructed before the one at Harriman, WHBT, talking about virgin territory.

Q. You had no such conversations with Mr. Burn? A. I did not. I did not.

[Tr. 1503]

Q. All right, now we go to page 381 of this transcript, same transcript I have been referring to all along, Mr. Kenkel inquiring of Mr. Burn:

"Question: Did there come a time, Mr. Burn, after the bank bought the note, that you learned that Mr. Crowder had filed an application for another station in Harriman?

"Answer: Yes.

"Question: And what, if anything, did the bank do?

"Answer: Well, we came into this case with a petition, objecting to the new station.

"Question: After the objection was filed, did you have any conversations with Mr. Crowder concerning it?

"Answer: I asked him why he undertook to bring a third station into Roane County instead of going into a town that had no radio station, that he had told me would be his policy, and he said that the management of WHBT was so incompetent that they undertook to operate a metropolitan station in a small town, that they had changed the location of the station on the dial from the middle of the dial to the far right and that they had gone from 5,000 watts power, I believe it is that, and that the tubes they used so many times were not the tubes used when he operated the station and that there was a certain mortality among the tubes due to lightning or wear and tear and that one item was a considerable expense to the station and the policy of management of that sort would ultimately create a serious

financial problem and that he wanted WXXL to be in position to fill the void. Now, the words 'fill the void' are my words and not his."

Did you have any such conversation with Mr. Burn? A. No, I did not, Mr. Bilger. Speaking about the tubes, I suppose he means the transmitter tube or console tube, I don't know, but a tube, that is an insignificant item in a year's operation with a radio station. Frankly, I doubt if Mr. Burn, if it comes to radio, would know a console from a modulation monitor.

Q. Now I turn to page 385 of the transcript, wherein I believe I am cross-examining Mr. Burn—yes, I am cross-examining Mr. Burn at this point, page 385, and I am inquiring of him about the so-called Crowder note and the bank's purchase of that note.

"Question: Well, is it not a fact that that is the note that your bank bought, was the Crowder note at the instigation of Mr. Crosthwait when it was refinanced?

"Answer: Well–

"Question: Is that not a fact, Mr. Burn?

"Answer: The note was of the Folkways Broadcasting Company, Inc.

"Question: Through Mr. Crowder?"

MR. KENKEL: Could I have a minute. Perhaps your purpose in reading–

[Tr. 1505]

MR. BILGER: I am laying the foundation for Mr. Burn's testimony that Mr.–

I am laying the foundation to a specific representation by Mr. Burn that Mr. Crowder had a conversation about this note with Mr. Burn which appears about three questions down the page.

MR. KENKEL: Can I just ask the question be directed to the conversation rather than reading the other into the record.

MR. BILGER: What is the objection?

MR. KENKEL: Cumulative and unnecessary–

PRESIDING EXAMINER: Well, it is a foundation and it calls Mr. Crowder's attention to the situation. The objection is overruled. Continue, Mr. Bilger.

BY MR. BILGER:

Q. I go back to the answer "Well" and my interrupting him with this question:

"Question: Is that not a fact?

"Answer: The note was of the Folkways Broadcasting Company, Inc.

"Question: Through Mr. Crowder?

"Answer: And I did buy that note.

"Question: But you bought it at the instigation of Mr. Crosthwait, did you not?

"Answer: I think Mr. Crowder had been negotiating a sale to me of the note at times before that."

PRESIDING EXAMINER: That ends the reading from the

transcript and now you are going to ask your question?

MR. BILGER: That is right.

BY MR. BILGER:

Q. Did you, at any time, approach Mr. Burn to sell him the notes you had from Folkways? A. No, I didn't, Mr. Bilger. Why should I? My bank—

MR. KENKEL: Objection.

PRESIDING EXAMINER: Yes, objection is sustained. That "Why should I?" is stricken.

BY MR. BILGER:

Q. You did not approach him? A. I did not.

MR. BILGER: Mr. Examiner, I have some more material here and I wonder, I think it might be a little helpful if perhaps we recessed 10 minutes early and let me go over it at lunch time because I want to cut it down some.

PRESIDING EXAMINER: Yes, and also there would be opportunity for counsel to examine the source material, too.

MR. KENKEL: It may not be enough opportunity.

PRESIDING EXAMINER: All right, I understand.

MR. KENKEL: By the time we get back to the office and back over here.

PRESIDING EXAMINER: Anyhow, we will take a little longer lunch period. Let us adjourn until 2:00 o'clock.

[Tr. 1513]

Whereupon,

FREEMAN L. CROWDER

the witness on the stand at time of recess, resumed, and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. BILGER:

Q. I direct your attention, Mr. Crowder, to transcript, Volume 7, May 9, 1967, written, Mr. Burn is testifying and I am cross-examining him, page 432, and I specifically ask your attention be directed to the following questions and answers:

"Question: I see. Now, do you consider yourself a friend of Mr. Crowder's?

"Answer: Well, he is my customer. There is no enmity on my part."

Other than your transaction in the 1950's about the lease in Rockwood for WHBT, when you owned that facility, have you ever been a customer in any way of Mr. Burn? A. No, I have not.

Q. Now, Mr. Burn testified that you had told him that your way of making money in the radio business was to buy a station or acquire a construction permit to operate it, build it up, and sell it at a profit.

You have testified there were no such conversations, I ask you, sir, has that ever been your intention to so operate in the radio business?

[Tr. 1514]

A. No, sir.

Q. At any time? A. No, sir.

Q. When the application was filed with the Commission regarding the WLIV station, written you, were listed as general manager— A. That is right.

Q. Was it your intention in any way to deceive or mislead the Commission? A. No, sir, I was the general manager until we went on the air because I handled all of the transactions, made out all of the forms, all of the reports, made all of the purchases, everything.

Q. And I believe you have already testified as to what you did afterwards so we don't need to go into that. When the amendment was filed to the application for permission to construct what is now WXXL, there was attached as a part thereto certain program contact letters about which we have discussed in this hearing, to wit, Mr. Black, Mr. Warren, Mr. Harmon and others, and was it your intention at that time to deceive or mislead the Commission with respect to the acquisition or content of those letters? A. No, sir.

MR. KENKEL: I am going to object.

[Tr. 1518]

testified with clarity yesterday exactly about this letter.

MR. LETTERMAN: With respect to Mr. Scarborough's testimony, I am not sure it could be characterized as Mr. Bilger has characterized it but in any event he was only testifying as to what had occurred between himself and Mr. Crowder from his point of view as causing him to do the things he was caused to do

PRESIDING EXAMINER: Of course.

Let's get Mr. Crowder's connection with Mr. Scarborough, what he did, how he got Mr. Scarborough to get these letters or to have these people send the letters to him or whatever the situation was and then, as Mr. Letterman suggested, ask the ultimate question.

MR. LETTERMAN: You don't have to.

MR. BILGER: I know I don't have to, but I am going to do it. Thank you, Mr. Letterman.

BY MR. BILGER:

Q. All right.

Directing your attention to the period October, 1961, were program contact letters obtained in connection with the WXXL, application? A. By Mr. Scarborough.

Q. The answer to my question is as to whether they were obtained?

[Tr. 1519]

A. Yes, sir.

Q. By whom? A. Mr. Scarborough.

Q. Describe your relationship with Mr. Scarborough with respect to acquisition of this letter, to wit, the one from C. R. Black, directed to you, dated October 13, 1961? A. You mean you want me to explain my reason for getting Mr. Scarborough—

Q. Yes, if you got Mr. Scarborough, explain the circumstances, yes. A. Well, to begin with, after I filed the application for the construction permit I got this letter from Mr. Bilger—

Q. Not Mr. Bilger— A. Mr. Jorgensen.

Q. Mr. Bilger didn't write you a letter. A. Suggesting we make a survey of the community and get letters. I was enlarging my bottling plant in Livingston at the time. Therefore, I didn't have time to make this survey, I asked Mr. Scarborough or he volunteered rather to do it for me.

Q. All right, and did he, Mr. Scarborough, acquire the Black letter to which I referred? A. Yes, he did.

Q. And did you then—well, what did you do with the letter after you got it? And by the letter I am referring to

[Tr. 1520]

the Black letter, dated October 13, 1961. A. I mailed the letter to Mr. Jorgensen.

Q. What did he do with it? A. He filed it with the Commission.

Q. Was your intention to mislead the Commission in the filing of the letter as to who got it? A. No, sir.

MR. KENKEL: Objection.

PRESIDING EXAMINER: Let's get the statement that was made made to the Commission, what was the precise statement made to the Commission which is the subject of the charge of misleading, if there is any such charge now.

MR. BILGER: I think maybe Mr. Kenkel is the man to answer that. He is the man who got into the program contests and all I recall, sir, at pre-hearing conferences he described his reasoning this was a part of the intention of Crowder to traffic. He asked Mr. Crowder as an adverse witness about these specific letters.

I brought Mr. Scarborough up from Tennessee, as you know, to tell us what he did. Mr. Crowder has just now indicated the Crowder relationship. I will find in findings a part of, I am quite sure, these letters characterized as significant in the intention of Mr. Crowder to engage in traffic.

PRESIDING EXAMINER: That is the thing I want to have cleared up now. What is the precise misrepresentation here

[Tr. 1521]

which is the subject of the questioning now? So that Mr. Bilger can ask a question of his witness which I will permit perhaps? What is the basis of your objection?

MR. KENKEL: The basis of my objection is the form of the question, the fact that it calls for an ultimate conclusion which only the facts can make and—well, now he is not asking what was your intention with respect to this, but asking him an overriding, broad one that even has a legal conclusion attached to it. That is the basis of the objection.

PRESIDING EXAMINER: All right, what is your intention, in regard to these, to this letter, Mr. Crowder?

THE WITNESS: Well, the intention of the letter was to show the Commission a survey had been made in the community.

PRESIDING EXAMINER: I see. All right, Mr. Bilger.

BY MR. BILGER:

Q. Was that the only intention in submitting the letter? The Black letter, Mr. Crowder? Was it your only intention in submitting this letter to the Commission? A. Sure.

Q. The October 13, 1961, Black letter? A. Right.

MR. LETTERMAN: May I ask one question here?

PRESIDING EXAMINER: Yes. Mr. Letterman would like to ask Mr. Crowder a question, is that all right?

MR. BILGER: Yes, I have a series of three or four letters

[Tr. 1561]

don't believe I had marked anything else.

PRESIDING EXAMINER: All right.

Mr. Kenkel, Mr. Crowder is available for cross-examination then.

CROSS-EXAMINATION

BY MR. KENKEL:

Q. Mr. Crowder, I am directing your attention to the docket here in the room on the application here in hearing, your WXXL application, and specifically directing your attention to the amendments you filed dated November 8, 1961, subscribed and sworn to by you on November 8, 1961, isn't that correct? A. That is correct.

Q. Now, the first letter appearing after the "form of amendments," the form statement of amendment entitled, "Exhibit 6, Section 4, paragraph 10, a letter on letterhead of Georgetown University, signed by Father Heyden, addressed to Mr. Freeman Crowder, that letter was sent to you as a result of a letter sent to Georgetown by Mr. Scharborough, wasn't it? A. Right.

Q. The next letter dated October 13, 1961, Harriman City Schools, that is the Black letter we have talked about? A. Correct.

Q. We had testimony on that by you and Mr. Scarborough. The next one is Tennessee Farm Bureau Federation, dated

[1562]

October 4, 1961, addressed to F. L. Crowder, signed by Murray Miles, Murry Miles, Jr., and that was a letter sent to you as a result of a letter sent to Tennessee Farm Bureau Federation by Mr. Scarborough? A. Correct.

Q. Next letter on letterhead of National Music Camp, dated October 12, 1960, signed by L. D. Greily, and it was sent to you as a result of the letter sent to Mr. Greily by Mr. Scarborough? A. I presume Mr. Scarborough wrote to him.

Q. You didn't write to them there, did you? A. No.

Q. And going back you didn't write to the Tennessee Farm Bureau Federation? A. I did not. I thought I explained to you Mr. Scarborough secured all of these letters other than from Mr. Warren.

Q. Now, all of these letters, and we can shorten it up, if I may, that is the letters to Georgetown University, Harriman City Schools, I am just calling these off, the letterhead as it appears, Tennessee Farm Bureau, National Music Camp, American Legion Post 53, Newman Davis Post? A. Right.

Q. National Educational Association? A. That is correct. I will have to back up. I think I

[Tr. 1563]

secured that one. I had forgotten about it, from the Mayor of the town.

Q. You think you got that one? A. I am sure I did.

Q. Letterhead of City of Harriman, dated October 17, signed A. B. Foster, Mayor? A. Correct.

Q. Next letter, I guess it is the Chruch of Christ, radio and television program? A. From Abilene, Texas, right.

Q. Mr. Scarborough obtained it? A. I presume, I am sure he wrote the letter to them requesting to see if the program would be available if and when we went on the air.

Q. The American Red Cross signed by Mrs. Stone, or signed Harold H. Booth, by Mrs. Stone? A. I believe he stated he talked to Mrs. Stone about it.

Q. British Broadcasting, he obtained this letter? A. I am sure he did.

Q. University of Tennessee, Mr. Scarborough obtained that letter? A. Same.

Q. The next one signed by Mr. Warren is the one you got? A. Right.

Q. The next one from Mr. Harriman obtained by Mr. Scarborough?

[Tr. 1564]

A. That is what he said yesterday.

Q. Do you know whether he obtained it or not? A. Well, I obtained it. I suppose, I can't remember all of the letters, but I am sure Mr. Scarborough gave me the letter.

Q. That is the Harmon letter? A. Right.

Q. The next one is Tennessee Highway Patrol obtained by Mr. Scarborough? A. Right.

Q. Southern Baptist Radio and Television Commission? A. Yes, sir.

Q. Obtained by Mr. Scarborough? A. Right.

Q. By letter, in other words, he wrote to them and asked for a response to be sent to you? A. That is right.

Q. Now, that is the sum total of the letters that were submitted under date of November 8th? A. As far as I know, yes, sir.

PRESIDING EXAMINER: November 8, 1961.

MR. KENKEL: Yes.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. As I told Mr. Bilger, these were all submitted for the

[Tr. 1568]

All right, it is understood arrangements will be made to have it done.

BY MR. KENKEL:

Q. Mr. Crowder, you received a copy, did you not, of the petition to deny your application which was filed by Folkways Broadcasting Company? A. Which one do you have reference to?

Q. I will show you, I am directing your attention, sir, to the Commission file copy of "Petition to Deny" and it reads, "Comes now Folkways Broadcasting Company, Inc., a licensee of Radio Station WHBT." A. If I remember correctly, that is the first one.

Q. You did receive a copy of that? A. I did.

Q. And you prepared or, you filed an opposition to that petition, did you not? A. Yes, sir, as you well know.

MR. BILGER: Just answer the questions.

PRESIDING EXAMINER: Just answer the question, Mr. Crowder, otherwise we will get into the trouble here by enlarging the record.

BY MR. KENKEL:

Q. One of the matters raised in the petition to deny concerned the question of the acquisition and submission of these letters that we have just discussed, didn't it, sir?

[Tr. 1569]

A. I don't remember.

Q. May I refresh your recollection. I direct your attention to the opposition Crowder files to the petition to deny and I am directing then your attention to Attachment 14—

MR. LETTERMAN: When you make reference to these various dates, please use the date of filing, would you?

BY MR. KENKEL:

Q. All right, I am referring to now, to the opposition to petition to deny stamped as "Received in Commission's Secretary's Office, January 8, 1963."

I am directing your attention, sir, to attachment 14, which is titled, "Statement of Walter H. Scarborough." A. Right.

Q. Just take your time and read it. That discusses the acquisition of these letters, does it not, by Mr. Scarborough? I direct your attention to—well, you read the whole thing, with particular reference to page 2 of that statement. A. What do you want to know about it?

Q. Have you taken a look at it? A. Yes.

Q. Isn't it true, sir, that this affidavit is followed by your affidavit, this affidavit being the Scarborough affidavit, is followed by your affidavit, is it not? Your affidavit states, does it not, and I won't even paraphrase it for you, "That I have read the information contained in

foregoing opposition to petition to deny and the information contained therein is true and correct to the best of my knowledge and that where indicated the information is based on my own knowledge and experience in radio broadcasting in the Harriman, Tennessee, market," isn't that true? A. What do you mean "isn't it true"?

Q. That you made the affidavit under date of 3rd day of January, '63? A. That is right.

Q. So this opposition, to get back to my original question, this opposition was prepared and filed by you, wasn't it, sir, in discussions with Mr. Scarborough and your attorney and other people? A. The question again?

MR. KENKEL: Would the reporter read the question?

(The pending question was read by the reporter.)

BY MR. KENKEL:

Q. Strike that. I will change it.

You knew what was in that opposition, didn't you? A. Sure.

Q. And you had read it and had gone over it, hadn't you, before you signed your affidavit? A. Sure.

PRESIDING EXAMINER: The answer is "Yes"?

THE WITNESS: Yes.

[Tr. 1574]

document, your Honor, we would have all kinds of things in the record.

PRESIDING EXAMINER: Of course, the Constitution would even be admissible, because you might mention that, too. There has to be some evidential foundation laid as Mr. Letterman said by way of prior inconsistent statement perhaps or otherwise. Mr. Scarborough was here and was available for questioning, of course.

BY MR. KENKEL:

Q. May I direct the witness's attention, Mr. Crowder, directing your attention to page 3 of what has been marked for identification as WHBT-35 and particularly the sentence, "In ALL," with the word "ALL" capitalized, "In ALL cases the suggested statement was changed before the final letter was submitted by mail from the individual citizen, and not read by me, to Mr. Crowder for submission with his application."

Do you see that, sir? A. Yes.

Q. Do you understand that is Mr. Scarborough's affidavit we are speaking about in connection with these program letters? A. That is right.

Q. You told us, sir, that Mr. Scarborough gave you the letters? A. That I remember, yes. Evidently he didn't give me all of them.

[Tr. 1575]

Q. Now, may I direct your attention to Transcript 283, which you testified to here on Monday, May 8, and I am questioning you, first, about the Harmon letter;

"Question: Mr. Harmon's letter dated October 26, 1961, Mr. Scarborough prepared it?

"Answer: I don't know.

"Question: Did Mr. Harmon give you this letter?

"Answer: No.

"Question: He did not?

"Answer: No. Mr. Scarborough mailed all of the others at one time to me in Livingston, Tennessee.

"Question: Mr. Scarborough obtained them and mailed them to you in Livingston?

"Answer: He mailed them to me. I don't know about–I guess he obtained them."

Do you recall that testimony? A. I do.

Q. Do you wish to change it in any way? A. I was having reference to the letter he obtained locally, not from the others. That was, as I remembered it, that he mailed them to me. He might not.

Q. So all of the local letters were mailed to you? A. As I remember; except for the Warren one.

Q. By Mr. Scarborough? A. As I remember.

[Tr. 1576]

Q. Except for Warren that you obtained? A. As I remember it, yes.

Q. I now offer 35 as a prior inconsistent admission by the witness because, as the docket shows and as this witness has previously testified, this was part of his opposition that he filed with the Commission and filed it by his affidavit and it says there about the letters being, and the particular portion in page 2 where the statement is made by his agent in connection with the letters, that they were mailed by the individual citizens to Mr. Crowder and we have now the other versions on the record. So I offer it for that purpose.

PRESIDING EXAMINER: I think before a matter can be a prior inconsistent statement, you certainly have to give the witness an opportunity—even assuming this is Mr. Crowder's statement—the witness a chance to explain. You have to present the statement to him. You just can't pull it out from left field and then make a statement regarding it.

MR. KENKEL: I don't have to, sir.

PRESIDING EXAMINER: Yes. Yes. Before a prior inconsistent statement can be used to impeach a witness you have to ask him the circumstances and give him an opportunity to explain the contradictions, if any, and so on.

Mr. Bilger.

MR. BILGER: I was just going to state I don't know that perhaps what I have to say goes to the weight of this thing,

[Tr. 1589]

BY MR. KENKEL:

Q. Mr. Crowder, I show you the Commission's duplicate file copy of application for an FM station in Harriman, Tennessee, with the applicant given as F. L. Crowder, doing business as Harriman Broadcasting Company, executed September 1, 1966.

Directing your attention to page 2 thereof, sir, is that your signature? A. It sure is.

Q. Will you take a look at the application. Is that the application you filed? A. That is right.

Q. Directing your attention to Section Roman Numeral II, page 4, table 2, Roman Numeral II, business and financial interest, stated there in name of party, F. L. Crowder. Firm name, principal place of business and nature of business and I am reading this entry, "Harriman Billiard Parlor, Harriman, Tennessee, 100 percent owner, 1944 to present."

That is stated therein, is it not? A. Yes, sir. We talked about that before. That is an error.

Q. Are there other entries, are there not, sir?

7-Up Bottling Company, Livingston, Tennessee, 100 percent owner, 1966, to present. Is that Correct? A. Correct.

[Tr. 1590]

Q. Is that an error? A. No.

Q. Harriman. There is another entry is there not, Harriman Broadcasting Company, Harriman, Tennessee, 100 percent owner, 1961 to present; that is an entry there? A. Yes.

Q. Is that an error? A. No, sir.

Q. There is another entry, Audio Broadcasters, Livingston, Tennessee, 50 percent partner, to 1964. That entry is present there, is it not? A. Right.

Q. Is that entry in error? A. No, sir.

Q. Another entry, Harriman Broadcasting Company, licensee of WHBD, Harriman, Tennessee, 100 percent owner, 1950-1956; is that an entry an error? A. That is correct.

PRESIDING EXAMINER: No, it is not an error.

THE WITNESS: No.

BY MR. KENKEL:

Q. I am directing your attention to Section Roman Numeral IV-A. Section IV-A, page 5 of the application and to paragraph 27 thereof where the question is "State the name(s) and position of the person(s) who determines the day-to-day

[Tr. 1591]

programming decisions and directs the operation of the station covered by this application and whether he is employed full time in the operation of the station."

Is it stated in there F. L. Crowder, owner, part time? A. Right.

Q. That is stated? A. Right.

Q. The next entry, Walter H. Scarborough, station manager, full time? A. That is what it states. Of course, it has been changed now. He is not an employee any more.

Q. Has that been changed? A. No.

PRESIDING EXAMINER: What has been changed?

THE WITNESS: The application for an FM station.

BY MR. KENKEL:

Q. Is it not true that you filed an amendment to the FM application in March or April of this year?

Mr. Examiner, may I ask you to direct the witness to answer the question?

PRESIDING EXAMINER: There is an objection I imagine.

MR. KENKEL: Or wait for the objection.

MR. BILGER: Mr. Examiner, I object to this line of questioning because I see no relevancy to the issues that we have here. I don't think it is material. I don't have any

[Tr. 1592]

real objection on the basis of the substance. As a matter of fact, I will stipulate with Mr. Kenkel regarding what it contains if he asks me to do so. But I don't think it is pertinent. I think we are burdening the record with something that is not significant.

Or, if it has some significance I would appreciate somebody pointing it out to me.

PRESIDING EXAMINER: Mr. Kenkel.

MR. KENKEL: The question that was being posed to the witness when I was interrupted concerned an amendment to the FM application which was filed here with the Commission within the last two months. There was an amendment to the application but it did not amend this section.

That is what I want to get into the record.

MR. BILGER: What pertinency is it, that he failed to amend to take out Mr. Scarborough's name or failed to correct what has now been called to his attention in this trial as an error in the application?

PRESIDING EXAMINER: Are you trying to show that there is some question about the trafficking issue here? Is this what this is for or is it just a general statement this should have been amended because Mr. Scarborough is no longer going to be active?

MR. KENKEL: There is your question. We have some statement he is no longer going to be active but we have this

[Tr. 1593]

application which has been amended and the Scarborough statement was specifically left in there. I think that is for argument or cleaning up later.

PRESIDING EXAMINER: Let us clean it up right now.

Mr. Crowder is on the stand. What about that, Mr. Crowder?

MR. KENKEL: His attorney will have him on redirect.

PRESIDING EXAMINER: You have now put in the record the fact that the amendment was in the last two months Mr. Scarborough's name was left in there. I don't want the record to remain in the posture that there is anything untoward about this if there is not.

Let us have it cleared up now.

Mr. Crowder, will you explain why Mr. Scarborough's name was left in there.

THE WITNESS: It was oversight. I appreciate Mr. Kenkel's calling my attention to it. It will be corrected.

BY MR. KENKEL:

Q. Mr. Crowder, you told Mr. Bilger yesterday that you did not want to sell your interest in WLIV, Livingston. A. That is right.

Q. There was a buy and sell proposition, buy or sell proposition made to you by your brother-in-law? A. Correct.

Q. When was that made? A. 1964.

[Tr. 1594]

Q. When in 1964? A. Probably 30 to 60 days before the deal was made.

Q. Thirty to sixty days before it was made? A. I would think so, yes, sir.

Q. Was it a written proposition? A. No, sir.

Q. It was not written? A. No.

Q. When did you agree to accept this proposition? A. I don't remember the date. I can't remember that.

Q. I am directing your attention to the WLIV file in the Commission and to the application entitled BAL-5077, stamped as received in the Commission's offices on April 14, 1966, and to page 2 thereof and ask you, sir, if that is not your signature? A. Yes, sir, that is my signature.

Q. Directing your attention to what is labeled as Exhibit No. 1 in that application there is a statement, "Mr. McCoin made an offer to purchase Mr. Crowder's partnership interest for the sum of $50,000." A. That is right.

Q. It is not stated in there that it is a buy or sell proposition? A. I don't know what it is stated in there. I don't remember. His attorney drew up the contract. I didn't. I

[Tr. 1595]

didn't have it done.

Q. Mr. Bilger directed your attention to the agreement not to compete filed with that application, did he not? A. That is correct.

Q. That is signed only by you, is it? A. That is right.

Q. Dated January 31, 1964? A. Yes.

PRESIDING EXAMINER: What is signed only by you?

MR. KENKEL: The agreement to compete was signed only by you, is it not?

THE WITNESS: Correct.

PRESIDING EXAMINER: There was a portion stricken out from there. You don't have reference to the portion stricken.

BY MR. KENKEL:

Q. The portion that you say is stricken, I can read it and I agree with you, sir, that there is some shading or writing over it but Mr. Bilger read it for the record and I, too, can read it, opposite this portion there is no initials in the margin or anything else, is there? A. No.

I didn't mark that. Mr. McCoin marked it out.

Q. Mr. McCoin marked it out? A. Right.

PRESIDING EXAMINER: But it was at your instance that he

[Tr. 1596]

marked it out?

THE WITNESS: Correct.

BY MR. KENKEL:

Q. When was that done, sir? A. I don't remember the date.

Q. Directing your attention to the date shown on the agreement, March 31, 1964. A. That is right. As a matter of fact, I didn't know he was going to want that agreement until he presented it to me.

Q. He presented it to you and he marked it out is your testimony? A. That is right.

Q. I am directing your attention, sir, to the Commission's file copy of an application bearing File No. BP-10326, of F. L. Crowder and R. H. McCoin doing business as Audio Broadcasters, Livingston, Tennessee, stamped as received by the Commission on January 23, 1956.

Directing your attention to page 2 thereof, where it shows it was subscribed and sworn to on January 20, 1956. It was signed and sworn by you, sir? A. Right.

Q. Directing your attention to the entry on Table 2, that is in Section II, Roman Numeral II, page 4, there is an entry, is there not, sir, and I am reading the name of the

[Tr. 1597]

party, Column B, the firm name, principal place of business, nature of business and extent and nature of interest, giving dates. A. Right.

Q. The first entry is F. L. Crowder, Harriman Billiard Parlor, Harriman, Tennessee, owner since 1944. A. Right.

Q. Is that correct? A. Another error.

Q. How about the second entry, Harriman Broadcasting Company, owner since 1950? A. That is correct.

Q. How about the third entry, R. H. McCoin, Sam McCoin Grocery Company, Red Boiling Springs, Tennessee, 50 percent owner past five years. A. I can't vouch for that.

Q. You don't know whether that is correct or not? A. No.

Q. You told us yesterday– A. I would think that is correct.

Q. You told us yesterday, sir, about your brother-in-law, the same R. H. McCoin, selling a car dealership, didn't you? A. That is right.

Q. When did he sell the car dealership? A. 1955 he told me.

[Tr. 1598]

PRESIDING EXAMINER: Why are we going into these matters about Mr. McCoin for? Are they pertinent to the question of trafficking here, about the only thing that is going to be asked about if at all.

We cannot inquire into the validity of every representation made by everybody in this file or we would be here forever.

MR. KENKEL: That is not my purpose.

PRESIDING EXAMINER: I realize it is not your purpose to be here forever.

MR. KENKEL: I mean your suggestion that I am going into misrepresentations or errors by everyone. This matter of his brother-in-law's other interest was brought up yesterday in direct examination. I am approaching the matter in cross-examination.

PRESIDING EXAMINER: All right. As I said before, we make reference to the Constitution of the U. S. That does not mean that we have to get into the minutes of the Constitutional convention. There are a lot of things that are referred to that are not necessarily the subject of further questioning. But continue, let us see how far we get.

BY MR. KENKEL:

Q. When in 1955 did your brother-in-law sell his car dealership? A. That I don't know.

Q. Do you have any idea?

[Tr. 1599]

Q. Do you have any idea? A. No. No idea.

Q. When was this discussion you had with your brother-in-law following the sale of the car dealership with respect to going into Livingston, Tennessee? A. 1956, in Harriman, Tennessee.

Q. At Harriman, Tennessee? A. Right.

Q. Going back to WLIV files in the same application to which I directed your attention earlier, namely BP-10326, I am directing your attention to Section Roman Numeral III. Do you see it, sir? A. Yes.

Q. And to paragraph 1(b). Do you see it, sir? This is the financial proposal. A. Right.

Q. Do you agree, sir, that it is there stated as to revenues and expenses—applicant's experience in radio. A. That is correct.

Q. Your brother-in-law had no experience in radio in 1956 when the application was filed, did he? A. That is right.

Q. As a matter of fact you told us yesterday that the reason you went with him was because you had the experience and he didn't.

[Tr. 1600]

A. Correct.

Q. Now, sir, you know, as a matter of fact, don't you, that Folkways Broadcasting Company filed a petition to deny your Harriman application? A. Sure, I know it.

Q. You prepared the response thereto, didn't you? A. Yes.

Q. Had it prepared and as you stated in your affidavit, read it and specified the information and had it filed with the Commission didn't you? A. Sure.

Q. You know, of course, that one of the questions raised by the Folkways petition was what we called trafficking in licenses, you are aware of that, aren't you? A. Sure.

Q. I am directing your attention to page 12 of the Crowder opposition of which we have been speaking. Is it not true, sir, that you therein state, "The true facts, which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his station interests due to ill health." A. That is right.

Q. Isn't that what you said there? A. Right.

Q. Isn't that what you told the Commission?

[Tr. 1601]

A. Yes, yes.

Q. Did you not also tell the Commission on your affidavit "Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry?" A. Correct.

Q. Isn't that what you told the Commission under your affidavit? A. Right.

Q. I give you an opportunity, sir, to review that opposition. Is there anything therein stated about WLIV or Livingston? A. No, sir.

Q. Isn't it true, sir, that you did not tell the Commission when you filed this opposition that the two sales that you are there speaking about, WDEH and WHBT were in 1956 and at the same time you were acquiring the WLIV permit with your brother-in-law? A. What is the date of this petition? Why should I tell him. This is dated 1963.

Q. Isn't it true that you did not tell the Commission at that time in this opposition? A. No, I didn't tell them.

Q. Isn't it true, sir, that Folkways thereafter did file a reply to your opposition and brought the matter to the Commission's attention; you are aware of that, aren't you?

[Tr. 1602]

A. Sure.

Q. Isn't it true that the Commission wrote you a letter–let me find the letter and I will show it to you.

Under date of December 17, 1965, during Commission Reference 8831? A. That is right.

Q. Did not the Commission therein state "In your application you state, interalia, that you sold your two radio interests–I am sorry, in your opposition–let me start again.

"In your opposition you state, interalia, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were party to an application for a construction permit for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50 percent partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, your request to supplement your opposition pleading with a further statement concerning this matter. Such supplemental statement should be served upon the petitioners and their counsel, if any."

You received that Commission letter did you not, sir? A. That is right.

Q. Whereupon, you filed a supplemental statement marked

[Tr. 1603]

as received by the Commission on December 25, 1965, under your affidavit saying, "F. L. Crowder being duly sworn does hereby state he has read the foregoing 'supplemental statement' and the facts therein stated unless susceptible to official notice are true and correct based upon his personal knowledge and information" and the affidavit was made December 27, 1965? A. Right.

Q. Directing your attention to that supplemental statement, did you not, under your oath then tell the Commission, "In 1956 Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee." His health became such that he could no longer continue in a day-to-day active operation thereof and for that reason both stations were sold in that year. It was his intention then to withdraw from such activity and the Commission was so informed. A. That is right.

Q. Going on, "That same year his brother-in-law, Mr. R. H. McCoin was unemployed and wished to become engaged in broadcasting, having sold his car agency in 1955." A. That is correct.

Why don't you read the rest of it?

MR. BILGER: I will get to that. I will have my turn at bat eventually.

BY MR. KENKEL:

Q. I agree that I have not read the entire supplemental

[Tr. 1604]

statement. Your attorney will be able to take you over such additional parts as he may want.

Is it not a fact you did not file anything further with the Commission, nothing further beyond this December filing I am talking about—do I make my point clear? I don't want to confuse you.

I am asking you this question—

PRESIDING EXAMINER: May I interrupt? In response to the Commission's request for a statement which they said should be served on the other parties did you file anything else or submit anything else beyond the document from which Mr. Kenkel was now reading, Mr. Crowder?

MR. BILGER: Mr. Examiner, at this point in time I represented Mr. Crowder. If I were asked that question I would not remember.

I know not all the pleadings but they are I believe multitudinous. This should not be entrusted to anyone's memory.

PRESIDING EXAMINER: All right.

It is not a memory contest. Let us get the docket. I don't want to ask that of Mr. Crowder with the intention in any way of binding him. I thought he might recall. As you say, Mr. Bilger, there are so many documents, the only way to establish this is through the record docket, itself. If there is anything else that Mr. Crowder filed in response, let us mention it then.

[Tr. 1605]

If not, let the record show that there was not. I don't know what the situation is.

MR. KENKEL: Do you want to take a look at the document, Mr. Bilger, and I will ask you rather than Mr. Crowder? My examination of the docket does not show anything further filed after this supplemental statement prior to and up to the date of the Commission's memo opinion and order released January 15, 1966.

MR. BILGER: I was going to say I am sure you mean with respect to the Commission's inquiry of Mr. Crowder about which you have been examining him? Do you not?

MR. KENKEL: Yes.

PRESIDING EXAMINER: The inquiry is as to the seeming inconsistency between Mr. Crowder's statement that he was in ill health and wanted to get out of the broadcast business and his acquisition at the same time of an interest in another station in Livingston, Tennessee.

Is there any other response—I mean the document from which Mr. Kenkel read in part.

MR. BILGER: Mr. Kenkel has made his statement that he has examined the docket and he has found nothing. I don't know where we can go beyond that.

MR. KENKEL: I want either the witness or counsel to concede that there is nothing else.

PRESIDING EXAMINER: All we can ask of the witness is if

[Tr. 1606]

he recalls nothing further, if that is so.

MR. KENKEL: I was off on that line and you stopped me.

PRESIDING EXAMINER: No. I just wanted to have this established. Now we did refer to the document. Now we have as much apparently from the document as we can. Now you say here is a suggestion that we also ask the witness. The only way we can ask the witness which will add in any way to this is to ask if he recalls anything.

The answer I got is that he does not recall anything further.

THE WITNESS: No, I don't, your Honor.

PRESIDING EXAMINER: Now does anyone else want to examine the docket for any other purpose? I am willing to accept Mr. Kenkel's statement.

MR. LETTERMAN: Your Honor, could we go off the record for a minute.

PRESIDING EXAMINER: Yes, off the record.

(Discussion off the record.)

PRESIDING EXAMINER: On the record.

The response by Mr. Crowder to the Commission's inquiry about which Mr. Kenkel was just questioning was December 27, 1965, and Mr. Crowder's affidavit to that statement, which was submitted to the Commission by way of response, is also on December 27, 1965.

MR. BILGER: I have examined the docket and I find nothing

[Tr. 1607]

was filed on behalf of Mr. Crowder insofar as this docket reflects from the supplemental statement to the date of the Commission's decision in January of 1967. The docket reflects there were—

MR. KENKEL: And the Commission's decision was the one initially granting the construction permit.

MR. BILGER: Yes.

MR. KENKEL: The memo opinion and order.

MR. BILGER: Yes.

PRESIDING EXAMINER: That was not January '67, was it?

MR. BILGER: January 1966.

PRESIDING EXAMINER: Now let us proceed.

BY MR. KENKEL:

Q. Mr. Crowder when did you sell the home in Livingston? A. I believe I stated three years after I purchased.

Q. When you sold it you told us it was because your wife didn't want you in Livingston or talked you out of it. A. No. I purchased the home planning to move but she decided she didn't want to move.

Q. Three years afterwards she decided? A. No.

Q. When did she decide? A. A few months after I bought it and built a garage on to the house.

Q. When did you build the garage?

[Tr. 1618]

THE WITNESS: I don't operate a radio station that way. I don't do tradeouts.

MR. LETTERMAN: Let me understand.

Are you saying that you do not or have not in any instance traded out the time of your station in exchange for services or goods?

THE WITNESS: No, sir. If I buy merchandise I pay for it and if they buy advertising they pay me cash.

MR. LETTERMAN: This has been a consistent policy and practice of yours in the operation of all your stations?

THE WITNESS: That is correct.

MR. LETTERMAN: Or any station in which you have had a voice?

THE WITNESS: That is correct, sir.

BY MR. KENKEL:

Q. Directing your attention to WDEH, Sweetwater, when you acquired the construction permit according to Crowder Exhibit No. 33, the construction permit application was granted on September 15, 1954, is that right? A. It was granted in 1954?

Q. I am just using this to direct your attention to a point in time. A. What was the question?

MR. KENKEL: Will the reporter read the pending question?

(The pending question was read by the Reporter.)

[Tr. 1619]

THE WITNESS: Correct.

BY MR. KENKEL:

Q. The program test authority was granted on February 4, 1955? A. That is correct.

Q. Which means that WDEH was built and operable at that time and the Commission gave you authority to commence operation? A. That is correct.

Q. Now who was the first manager you had, sir? A. A fellow by the name of Lee.

Q. What was his first name? A. I don't remember.

Q. L-e-e? A. Right.

Q. You hired him prior to the time you put WDEH on the air? A. Yes.

Q. How much? A. A few days, maybe 30 days.

Q. Thirty days? A. Approximately 30 days I would say, yes.

Q. How long did he stay with you at WDEH? A. I would say four to five weeks after we went on the air.

[Tr. 1620]

Q. Did you go on the air on February 4 or February 5? A. I don't recall the exact date.

Q. Sometime in February? A. Yes, sir.

Q. It was shortly after you got the Commission's authorization? A. I would think so, yes, sir.

Q. Because you tell the Commission that the station is ready for operation, you file your license application and they give you the operating authority and you commence shortly thereafter? A. Correct.

Q. You went on the air within a day or so of February 4, 1955?

PRESIDING EXAMINER: Now we are getting some confusion on that point. Mr. Crowder remembers only that it was a date in February, that is all. Now how long after the program test authority was granted, do you recall, Mr. Crowder?

THE WITNESS: No, your Honor.

PRESIDING EXAMINER: All right. That is as far as we can go.

MR. LETTERMAN: Your Honor, the practice is that once they do go on the air they are supposed to send a telegram to the effect that they have commenced operation and request program test authority. That telegram should be in the Commission's files.

[Tr. 1621]

PRESIDING EXAMINER: Yes. They have changed the procedure now on program test authority. As I remember it, at the present time, it is the application for the license that you get automatic or concomitant program test authority but at that time there was separate program test authority.

Is there a telegram in the files which tells when Mr. Crowder went on the air?

MR. BILGER: If the date has any significance.

PRESIDING EXAMINER: Yes, if it has any significance. Is it a question of how long the manager merely was with the station before he left?

Is this a good spot to take a recess?

MR. KENKEL: Yes.

PRESIDING EXAMINER: Let us take a five minute recess.

(Whereupon, at 11:10 a.m., a recess was taken until 11:20 a.m.)

PRESIDING EXAMINER: Back on the record.

BY MR. KENKEL:

Q. Mr. Crowder, you handled the sales of WHBT, Harriman, and WDEH, Sweetwater, Tennessee, through what was then the Blackburn-Hamilton Company. A. Who handled sales?

Q. Yes. A. Mr. Clifford Marshal.

Q. Of what was then the Blackburn-Hamilton Company?

[Tr. 1622]

A. As I recall.

Q. You got in touch with him and told him your two stations were on the market? A. Correct.

Q. When did you get in touch with him? A. As I recall it was June 1955.

Q. Mr. Crowder, I show you what has been previously marked for identification as WHBT No. 15. You were here in the hearing room were you not when Mr. Jack Harvey was present with the files? A. Yes.

Q. When these letters were marked? Now this is a copy, as you know, of a letter which indicates it is addressed to Mr. Freeman Crowder, bearing date of June 22, 1955, and sent by Mr. Clifford B. Marshal of Blackburn-Hamilton Company. You received such a letter didn't you? A. I don't recall but I guess I did. If I signed the agreement I am sure I did but I don't recall receiving the letter.

Q. You don't recall receiving the letter? A. No, I don't.

Q. Is your statement you did not receive the letter?

PRESIDING EXAMINER: He didn't say that. He said he is sure he did.

THE WITNESS: Since I signed the agreement I am sure I

[Tr. 1623]

received the letter.

BY MR. KENKEL:

Q. You are sure you received it since a listing agreement followed the letter? A. Yes.

MR. KENKEL: I ask that what has been previously marked as WHBT 15 be admitted in evidence.

PRESIDING EXAMINER: Is there any objection?

MR. BILGER: I should like before I agree or disagree with the receipt to ask about the purpose of the offer. The document contains what appears to me to be purely the opinions of the purported signer, Mr. Marshal, which have in my judgment nothing at all to do with the issues. He speaks in generalities about the radio stations, pleased to know we have more buyers at the present time and other matters.

If the date is significant—

PRESIDING EXAMINER: The date, of course, has been established already that Mr. Crowder undertook to engage Blackburn-Hamilton around June 1955. That is all that is important at this point. I haven't been told why that letter in itself is important.

MR. BILGER: It expresses the opinions of the writer which are in no way binding upon Mr. Crowder as I understand the law.

MR. KENKEL: If I may be heard, may I show you a copy of it?

[Tr. 1624]

PRESIDING EXAMINER: Of course.

MR. KENKEL: Now it includes opinions of Mr. Marshall. I agree that is not the purpose of the offer but there are other recitations therein. I am directing your particular attention to the second paragraph. I am going to use it also in asking Mr. Crowder about these earlier discussions with Mr. Marshal.

PRESIDING EXAMINER: All right.

Remind Mr. Crowder, if possible, through this document, Mr. Kenkel and ask Mr. Crowder if that is what Mr. Marshall said to him or he said to Mr. Marshal or if this in any way refreshes his memory about the matter.

MR. BILGER: That is one way to approach it.

Now I have an objection to the receipt of the document on purely legal grounds other than this. I thought this witness said that he did not have a memory of receiving that letter.

PRESIDING EXAMINER: He said I am sure I received it, however. But he has no independent recollection, I gather.

MR. BILGER: Of that particular letter. If the Examiner remembers, there are several letters from Mr. Marshall none of which indicates on the face of them that they were solicited by or whether the opinions expressed therein were that of Mr. Crowder. My view is that if he has no independent recollection of the receipt of that letter the generality that "I must have received it since later I signed a contract" does not make this letter admissible through this witness' testimony that he

[Tr. 1625]

"received in evidence some mail, obviously to get to a contract this must have been one of them".

I don't think this is enough to qualify this letter into evidence. If we go that route, then every other letter which he is shown, if he chooses to make the remark, "But I must have" is admissible.

PRESIDING EXAMINER: As far as it goes, Mr. Crowder has no specific recollection of having received this particular letter. But he did sign an agreement obviously for the sale of the station. I don't know as an exhibit how valid it is as an exhibit but you may inquire of Mr. Crowder about specific statements in that letter.

Refresh his recollection, Mr. Kenkel. Let us do it that way.

BY MR. KENKEL:

Q. Directing your attention, sir, to what has been marked for identification as WHBT Exhibit 15, dated June 22, 1955. It states that it is enclosing the company's employment agreement or listing agreement. It says employment agreement, does it not? A. That is correct.

Q. You have already agreed that you signed the listing agreement– A. I signed the agreements.

PRESIDING EXAMINER: Wait until Mr. Kenkel asks his

[Tr. 1626]

question.

BY MR. KENKEL:

Q. That was dated June 22, 1955? A. Correct.

MR. LETTERMAN: What was dated June 22, the letter of listing agreement?

MR. KENKEL: The listing agreement which was sent–the letter says, "Enclosed you will find"–the letter is dated June 22. It says "Enclosed you will find our standard employment agreement."

As you know what has been marked as WHBT Exhibit 16 is the listing agreement dated–

MR. BILGER: Is that in evidence?

MR. KENKEL: Yes.

MR. BILGER: Then the date is in the record already.

PRESIDING EXAMINER: I would not doubt that personally this letter which transmitted the employment agreement and which Mr. Crowder signed and returned was received by Mr. Crowder. There is no doubt in my mind personally that that is so.

MR. KENKEL: That is what I am trying to establish.

Q. Have you had a chance to take a look at what has been marked for identification as WHBT Exhibit 15? A. I looked at this letter.

[Tr. 1627]

Q. Does that refresh your recollection that prior to June 22 you had discussion with Mr. Marshal about the sale of WHBT, Harriman? A. I am sure I did, yes. I don't remember any discussion other than he is going to sell the stations for me.

Q. Where was the discussion?

MR. BILGER: Mr. Examiner—

THE WITNESS: Telephone.

MR. BILGER: I withdraw the objection.

BY MR. KENKEL:

Q. You did not meet Mr. Marshall in Knoxville, Tennessee, prior to June 22, 1955 and discuss the listing and sale of WHBT?

MR. BILGER: Now I object. I don't see any pertinency to this at all.

PRESIDING EXAMINER: I don't know where we are going either. Unquestionably Mr. Crowder employed Mr. Marshall to sell the stations. Now what else do we need? Unless there were certain statements made by Mr. Crowder to Mr. Marshall, I don't know.

MR. LETTERMAN: I take it that the point that is being established or one of the points being established is the fact that there were prior discussions to the date of June 22, 1955, and Mr. Crowder has said there were such discussions.

PRESIDING EXAMINER: All right.

How far along before June 22, 1955, did Mr. Crowder employ

[Tr. 1628]

Mr. Marshal or get in touch with Mr. Marshal, not employ him but get in touch with Mr. Marshal?

THE WITNESS: I would say to the best of my memory the week before June 22, 1955.

PRESIDING EXAMINER: Now that is established.

THE WITNESS: I talked with Mr. Marshal—

PRESIDING EXAMINER: One at a time.

BY MR. KENKEL:

Q. In that package I just handed you, sir, will you turn to what has been marked for identification—excuse me, this is in evidence—WHBT Exhibit No. 17? A. Yes, sir.

Q. That is when you sent back on June 24, 1955, the listing agreement and told Mr. Marshal that the only way you would sell your stations was for cash?

MR. BILGER: Wait just a minute now. Is 17 in evidence?

MR. KENKEL: Yes, 17 is in evidence.

MR. BILGER: All right.

BY MR. KENKEL:

Q. That is true, is it? A. No, that is not true. I did not tell him in the letter I would sell only for cash.

Q. Did you not state in there, "The only way I will sell the stations is for cash."? A. That is right. I am sorry. I overlooked that.

[Tr. 1629]

Q. Will you turn to what has been marked for identification as WHBT No. 18? It is a copy of a letter, the copy indicating it was sent to F. L. Crowder and that the writer was Clifford B. Marshal dated July 6, 1955. Did you receive that letter from Mr. Marshal? A. I don't remember.

MR. LETTERMAN: That is not the question.

BY MR. KENKEL:

Q. Will you take a look at it and see if that refreshes your recollection? A. No, that does not refresh my recollection. I don't remember the letter.

Q. Will you take a look at what has been marked for identification as WHBT No. 19. That is a file copy of a letter indicating a letter addressed to Freeman Crowder and the writer Clifford B. Marshal of July 20, 1955. Did you receive that letter? A. I don't remember.

Q. Will you take a look at it? A. I have already taken a look at it.

Q. Do you recall discussing with Mr. Marshall during June and July 1955 his coming down to Harriman? A. On the telephone, yes.

Q. With that recollection, will you address yourself again to Exhibits No. 18 and 19 for identification and see if

[Tr. 1630]

that does not refresh your recollection you received such letter from Mr. Marshal and then his coming to Harriman. A. No, it does not.

Q. Would you direct your attention to what has been marked as WHBT Exhibit No. 20. A. Yes.

Q. File copy of a letter indicated sent to Freeman Crowder dated October 26, 1955, and the writer Clifford B. Marshal. A. I don't remember that letter either.

Q. Will you take a moment to look at the letter, sir?

During the summer, September and October of 1955 you were having discussions, were you not, with Mr. Marshal about the sale of WHBT, he would pass along information to you about prospects and you would give him your reaction to prospective offers. A. Not that I recall.

Q. You do not? A. I don't remember if I did.

Q. Let me ask you this question.

What is your recollection of the sale of WHBT? How did the Blackburn-Hamilton listing agreement of June 22, 1955 eventuate in the contract which has previously been shown to you in the WHBT file, 1956, when you sold it to Folkways Broadcasting Company, Inc. If that question is too long I will

[Tr. 1631]

ask the reporter to read it back to you.

Did you follow it or do you want it read back? A. Read it back, please.

(The pending question was read by the Reporter.)

THE WITNESS: The deal was completed in Harriman, Tennessee.

BY MR. KENKEL:

Q. Now between the time of the listing agreement on June 22, 1955, and the completion of the deal in Harriman, Tennessee, what is your recollection of what transpired with respect to the sale of the station? A. I remember Mr. Marshal being in Harriman on two different occasions. One with a Mr. Wilkerson and the other with a Mr. Thompson.

Q. Thompson? A. Right.

Q. Discussing with you the sale, the possible sale and purchase? A. Correct.

Q. During that same period of time you received correspondence from Mr. Marshal didn't you? A. As I say I probably did but I don't remember this correspondence.

Q. When were these meetings with Mr. Marshall in Harriman? A. I don't recall.

[Tr. 1632]

Q. On June 24, 1955, you said the only way you would sell this station was for cash, didn't you? A. That is right.

Q. Did I ask you about the WHBT Exhibit No. 20 for identification. It bears the date of October 26, 1955.

MR. BILGER: Are you asking the witness if you asked him something about that?

MR. KENKEL: Yes.

THE WITNESS: I don't remember the letter.

BY MR. KENKEL:

Q. You don't remember the letter? A. No, I don't.

Q. Will you take a look at what is being marked for identification as WHBT Exhibit 21, a copy of a telegram, a copy indicating a telegram was sent November 2, 1955, to Freeman Crowder from Clifford B. Marshal? A. I don't remember the telegram but I remember Mr. Wilkerson being at the station with Mr. Marshal.

Q. Will you take a look at what is marked for identification as WHBT Exhibit No. 22, a copy of a letter indicating a letter sent to Freeman Crowder and the writer, Clifford B. Marshal?

PRESIDING EXAMINER: The date of that letter was 12-7-55.

MR. KENKEL: December 7, 1955, yes.

THE WITNESS: The same thing, I don't remember the letter.

[Tr. 1633]

BY MR. KENKEL:

Q. You don't remember the letter? A. No, I don't.

Q. How long do you keep the correspondence? A. How long?

Q. Yes.

MR. BILGER: Mr. Examiner, if the question really is, do you have a copy of this correspondence he should ask it. This is too general.

PRESIDING EXAMINER: Yes.

The way that is done obviously is by what is called a notice to produce. If the question of the originals in Mr. Crowder's possession was a factor here there could have been a letter sent to counsel with a request to produce these originals.

MR. BILGER: Yes, sir. Let us keep in mind these stations were sold many years ago. I presume the correspondence pertaining with them, I don't know what happened to it.

PRESIDING EXAMINER: I realize this is 12 years ago now and it is quite likely that these originals have been destroyed. I don't know but at least there is a great possibility that that is so. We are not going to get anywhere by inquiring about each particular letter, I believe.

BY MR. KENKEL:

Q. Will you direct your attention to what is being

marked for identification as WHBT Exhibit 23. A. I don't remember that either.

PRESIDING EXAMINER: That is the day after, 12-8-55. Are you going to 24, too, then?

THE WITNESS: The same thing applies.

PRESIDING EXAMINER: That is 2-10-56.

BY MR. KENKEL:

Q. The same thing applies? A. Correct. I don't remember this correspondence.

PRESIDING EXAMINER: Now Exhibit 25. Now let me ask about 25, WHBT Exhibit 25, 6-22-55, that pertained to WDEH?

THE WITNESS: Yes.

PRESIDING EXAMINER: Do you recall that one?

THE WITNESS: Yes, I signed both agreements the same day, WHBT and WDEH, the sales agreements.

PRESIDING EXAMINER: Is this a letter transmitting the agreement or what is it?

MR. KENKEL: No. Twenty-four?

PRESIDING EXAMINER: No, 25.

MR. KENKEL: Twenty-five is just listing agreement.

PRESIDING EXAMINER: You recall that one, you signed it.

MR. BILGER: It is in evidence.

PRESIDING EXAMINER: I am sorry.

MR. BILGER: Everything that contained his signature was placed in evidence with reference to those exhibits.

PRESIDING EXAMINER: No. 26 is dated 8-11-55. Do you recall that?

THE WITNESS: I don't recall the letter but I recall Mr. Perham being at the station.

PRESIDING EXAMINER: Twenty-seven is in evidence. Twenty-eight is dated 11-12-57. Is that a letter?

MR. KENKEL: That is something else.

PRESIDING EXAMINER: I don't want to interfere then. All right, Mr. Kenkel, I am sorry.

BY MR. KENKEL:

Q. After having had a chance to take a look at these, sir, and refreshed your own recollection, you testified there were discussions between you and Marshal and you met him on two occasions, do you have any reason to believe that you did not receive these letters and telegrams to which I have directed your attention?

MR. BILGER: Mr. Chairman–

BY MR. KENKEL:

Q. Let me ask the question.

You did not receive those letters and telegram to which I directed your attention.

MR. BILGER: Are you finished?

MR. KENKEL: Yes.

MR. BILGER: I object to the question.

PRESIDING EXAMINER: Yes. I don't think this negative

type of questioning is valid. You can't ask the witness to explore the infinite possibilities which might negate something and then draw a conclusion from that.

What we have in the record is that Mr. Crowder does not remember the receipt of these particular documents. That is about all we have.

MR. LETTERMAN: May I ask a question at this point in time.

PRESIDING EXAMINER: Yes, as far as I am concerned.

MR. KENKEL: Go ahead.

MR. LETTERMAN: Have you had an opportunity to search your files to see if the originals of any of these letters have been retained by you if they were received?

THE WITNESS: Mr. Letterman, when I sold WHBT I destroyed a lot of correspondence.

MR. LETTERMAN: May I ask you, do you have any–

THE WITNESS: If I have a copy of these letters I know nothing about it. I mean the original letters. I don't know.

PRESIDING EXAMINER: That is the situation then. There has been an offer or is there an offer of these various documents which have not yet, according to my records at least, been received.

MR. KENKEL: For the record I will offer 15 through 26 except for the two within that group which have already been received.

PRESIDING EXAMINER: There have been three that have been

[Tr. 1637]

received.

MR. KENKEL: Twenty-seven is in.

PRESIDING EXAMINER: 16, 17, 25 and 27 are in. Now the others between 15 and 26 inclusive are also offered. I feel that they have not been sufficiently authenticated insofar as receipt by Mr. Crowder is concerned and therefore they are not received.

(The documents heretofore marked for identification as Crowder's Exhibits No. 15, 18, 19, 20, 21, 22, 23 and 24 were rejected.)

MR. KENKEL: Your Honor, would you reconsider No. 15 which was the one that transmitted from Marshal to Mr. Crowder the listing agreement which he signed and sent back. The witness agreed on that basis–I think it is sufficient for 15 in any event.

PRESIDING EXAMINER: Yes. I said personally I have no doubt about the receipt of that letter because Mr. Marshal must have transmitted the agreement with something. The letter itself says, "I am transmitting the agreement," the same date apparently that the agreement was dated I assume.

Mr. Crowder then signed the agreement and returned it to Mr. Marshal. Now I don't know that that in itself is sufficient, Mr. Bilger.

MR. BILGER: No, sir, I would not agree. While I rested

[Tr. 1638]

my objection on what I consider a valid legal objection the fact is that if we let this in the record we are going to find findings being made on opinions of a third party which are not binding.

PRESIDING EXAMINER: Yes. I realize that the document itself is not binding insofar as the statements in the document are concerned about Mr. Crowder in any event.

I feel, therefore, that I must sustain the objection and deny the receipt of that document, too, even though we would assume that Mr. Crowder in the normal course of things must have received that type of document.

Apart from that though, because of the statements of Mr. Marshal in that document which would not in any event be binding on Mr. Crowder I must reject the document.

MR. KENKEL: I will say for the record that one of the reasons for moving the admission of these and why I would have them in the record is, for example, 15 is followed up by 17, Mr. Crowder's response to—

PRESIDING EXAMINER: That is another matter, Mr. Kenkel. I haven't seen these documents. If I may interrupt you, if there is any internal indication by responses by Mr. Crowder that he has received these particular letters that is another matter. I haven't been informed of that. If so, let us do that. That may prove the receipt of these particular letters.

There may still be the objection on the ground of statements

[Tr. 1639]

by Mr. Marshal which would not be binding on Mr. Crowder. I have no idea.

MR. BILGER: We have gone through the attempt of presentation here, the Willis statement and so forth. In addition if one letter indicates on its face that it encloses a contract that does not necessarily result in a conclusion that that is the fact.

PRESIDING EXAMINER: I am only saying this. I thought that Mr. Crowder had referred in a letter which is in evidence to the receipt of a previous letter by Mr. Marshal. Is there any such indication?

MR. BILGER: I don't know. If there is I will be happy to look at it.

BY MR. KENKEL:

Q. Mr. Crowder, may I direct your attention again to what is in evidence as WHBT Exhibit 17, being a letter from you dated June 24, 1955, to Mr. Cliff Marshal? A. Stating that I signed the agreements.

Q. And sent it back to Mr. Marshal enclosing the agreement to Mr. Marshal, right. A. I suppose I sent them. I am sure I sent them back to him.

Q. You state it in the letter, don't you? A. The letter says, "Enclosed you will find these signed agreements."

[Tr. 1640]

Q. You also say, do you not, "The only way I will sell the stations is for cash." A. Right.

Q. Now with that would you direct your attention again to what has been marked as Exhibit No. 15 and the statement in there where Mr. Marshal says, "If we can sell each of your properties for about $25,000 down on terms of from three to five years I can produce a number of buyers who will be interested in getting the property immediately."

Now, does your letter and particulary the statement telling him the only way you will sell your station refresh your recollection with respect to No. 15?

MR. BILGER: Give me a chance to object.

Now in the first place the letter which is in evidence as WHBT 17 is dated June 24, 1955. The letter to which Mr. Kenkel now refers the witness as being the predicate for that, the result of that, is dated—

PRESIDING EXAMINER: The 24th letter is supposed to be the result of the 22 letter. The question was about the internal reference to the 24th letter.

MR. BILGER: I judged that in reverse. Excuse me. I did not do this intentionally.

THE WITNESS: I still don't remember seeing the letter.

MR. BILGER: Your Honor, I believe the witness' statement "He must have," with reference in here to the agreement, plus

[Tr. 1641]

the other internal reference supplies sufficiently the presumption of receipt to receive 15.

PRESIDING EXAMINER: I think as to Mr. Bilger's objection about the statements about Mr. Marshal which are not binding upon Mr. Crowder I would rule right now that the letter was received.

Now I think we are beyond that point on the basis of this internal indication of the receipt of the letter. Now you have another objection.

MR. BILGER: I have an objection on the basis that the internal excerpts being cited to you result in a conclusion that they tie together sufficiently to give these documents enough validity to be admitted.

PRESIDING EXAMINER: We are only talking about the receipt of No. 15.

MR. BILGER: Now I argue this to you, broker's letters in general, and that is what this is, do not necessarily reflect an inquiry or request on the part of the client. The passage on which Mr. Kenkel relies does not in any way reflect that Mr. Crowder indicated cash at this time or that Mr. Marshal is responding to such a request.

PRESIDING EXAMINER: No. Mr. Marshal made a statement to Mr. Crowder about terms. Mr. Crowder apparently says, "The only way I will sell the stations is for cash." Mr. Kenkel argues that that in conjunction with Mr. Crowder's oral

[Tr. 1642]

testimony here that he must have received it, he is sure he did, I am just paraphrasing that, is sufficient to warrant the receipt of the letter.

I have said that I feel that is so as a matter of proof of the receipt of the letter.

However, you have another objection, Mr. Bilger.

MR. BILGER: Yes, of course, the one I made regarding the content of the letter.

PRESIDING EXAMINER: That is right. On that basis I think I must adhere to the ruling that the letter should not be received in evidence. If there is any particular portion of the letter that is pertinent apart from Mr. Marshal's opinions in that letter that is another story.

If you want to establish that Mr. Marshal suggested to Mr. Crowder that he might get terms for the station. Mr. Crowder then says, "I will take only cash," there is no question on that score it seems to me.

Mr. Crowder admits or states in his letter of response, what now appears as a letter of response, that he will take only cash.

To that extent the record is clear. Otherwise No. 15 is also rejected.

MR. BILGER: The record is likewise clear I believe on what the stations were actually sold for and the terms.

PRESIDING EXAMINER: Right.

[Tr. 1643]

MR. LETTERMAN: No.

PRESIDING EXAMINER: Let us get that in the record if that is not it.

MR. BILGER: It is about the $70,000 note.

PRESIDING EXAMINER: That is true. That is for WHBT, is it not?

MR. LETTERMAN: WHBT was sold for a total consideration of $80,000, $10,000 which was paid down, the balance of $70,000 was represented by a promissory note which called for payments, 83 payments of $835 and a final payment of $695.

Now I know that we have the broad terms of the contract in the record but we didn't have the period of payment for the balance of the contract or the amount of the individual payments each month.

PRESIDING EXAMINER: That is for WHBT?

MR. LETTERMAN: Yes, WHBT. The information I have just given you was shown in the agreement or the contract between the purchasers and seller, Exhibit 3, filed with the Commission May 10, 1956, in conjunction with the application BAL-2321 for the assignment of the license from F. L. Crowder to Folkways Broadcasting Company, Inc. That much we do have in the record now.

With respect to WDEH, I do not have the file before me so I can't give you the explicit terms.

PRESIDING EXAMINER: Can we establish it about WDEH? What

[Tr. 1644]

were the terms?

MR. LETTERMAN: Mr. Crowder, do you recall to whom WDEH was finally sold?

THE WITNESS: Who I sold it to?

MR. LETTERMAN: Yes.

THE WITNESS: Arthur Smith in Chattanooga. I believe he incorporated, WDEH, Inc.

MR. LETTERMAN: Your Honor, in this particular case and now I am referring to a document identified as Exhibit No. 3, bearing Commission file date stamp July 30, 1956, which is part of an application for assignment of license BAL-2399 between F. L. Crowder doing business as Harriman Broadcasting Company, Sweetwater, Tennessee, to the assignee, WDEH, Inc.

This particular contract I have reference to calls for a consideration of $52,500 at paragraph 2 thereof; following it indicates a down payment in cash of $10,000 with the balance of $42,500. This is to be represented by a promissory note for the balance calling for payments in the amount of $500 each month for the first twelve instalments and $600 per month for the remainder of said note until it was paid in full, together with an interest rate at five percent.

Mr. Crowder, may I ask you at this point in time does this reflect your best recollection of the price for which WDEH was sold and the terms of the agreement?

THE WITNESS: I remember the sales price was $52,500 but

[Tr. 1645]

the terms must be correct. I could not have told you if you had asked me.

MR. LETTERMAN: Thank you.

PRESIDING EXAMINER: Do we have WLIV, the sale to McCoin.

MR. LETTERMAN: Yes, we have broadly that it was sold for $50,000. That is Mr. Crowder's 50 percent interest in the station was sold for $50,000. Whether there were terms and conditions I haven't ascertained as yet. Frankly my interest was confined to WHBT for reasons other than the sale price of the station or the terms of the agreement.

PRESIDING EXAMINER: Is there anything else on this point?

MR. LETTERMAN: Could I ask Mr. Crowder at this point, did you receive $50,000 in cash from Mr. McCoin or what were the terms of that agreement to the best of your recollection?

THE WITNESS: The terms were cash.

PRESIDING EXAMINER: Mr. Kenkel.

BY MR. KENKEL:

Q. You told us that Mr. Lee was the manager. A. Sales manager.

Q. For how long? A. I believe I told you four or five weeks the best I remember, three to four weeks, the best I remember, actually after the station was on the air.

Q. Then you had another sales manager? A. Right.

[Tr. 1646]

Q. Who was that? A. His name was Foster.

Q. What was his first name? A. I don't remember. I believe his first name was Richard.

Q. How long did Mr. Foster remain as your sales manager? A. I believe close to a year.

Q. I think you told Mr. Bilger yesterday that you were a nervous wreck, sort of, after WDEH went on the air. A. For three months.

Q. That was because of your problem with Mr. Lee, was it not? A. Well, Mr. Lee and Foster.

Q. What was your problem with Foster? A. As I told you he got involved in local politics, got the station involved and caused me to lose a lot of accounts.

Q. Getting involved in politics caused problems for the station? A. He took sides against the local city officials and lost us some customers.

Q. Did you fire him or did he leave? A. No, I didn't fire him. We had a verbal agreement he was to stay at the station for a year.

Q. There were no similar operational problems with WHBT though, were there?

[Tr. 1647]

A. No. I happened to be manager of WHBT part of the time.

Q. You had Mr. Scarborough part of the time? A. In sales.

Q. You had no trouble with Mr. Scarborough, did you? A. No, I had no trouble with Mr. Scarborough.

Q. When you operated WHBT was it 250 watts? A. Correct, and I sold it at 250 watts.

Q. The transmitter tubes, the tubes in the final stage, do you recall what they ran? A. I don't know. I didn't buy the tubes. The engineers purchased the parts for the transmitter. I don't recall the price.

Q. You don't recall them specifically. You were watching the dollars, weren't you, as manager of your own property? You knew roughly what was involved? A. No, sir.

Q. You didn't know? A. No, sir.

PRESIDING EXAMINER: You said yesterday, Mr. Crowder, that the amount for tubes you felt was insignificant.

THE WITNESS: I said tube, your Honor. Mr. Burns said tube. I wouldn't think it was significant in a year's operation of a radio station.

[Tr. 1648]

BY MR. KENKEL:

Q. To be significant, how much would be involved? A. To me if it was a couple hundred dollars it would be insignificant for a tube for a year.

Q. When you were at WDEH you filed an application to increase power, didn't you? A. Yes.

Q. To 5,000 watts? A. No, 1,000 watts.

Q. In that connection you had occasion to ascertain the operating cost at 1,000 watts with particular respect to tube cost, tube life at 250 watts? A. I am speaking from the engineers standpoint. He informed me there would be no change in tubes. It would be a switch. The transmitter that I had was a thousand watt transmitter. He had to put a switch on it where he could cut it down to 250 watts.

Q. You understood the tube cost for a thousand watts wouldn't be any more than for say 250 watts? A. No, that wasn't my understanding. I wouldn't think so. I didn't discuss it. I don't know.

Q. You don't know? A. No, I really don't know. I would think it would cost more. As for knowing, I don't.

Q. When you agreed to be partner, with your brother-in-law,

[Tr. 1649]

McCoin, to be general manager, it was this type of knowledge that you were giving him, is that right? That is why you went with Mr. McCoin? A. What type of knowledge?

Q. Knowledge of the tube costs and operational costs. A. No. I know nothing about engineering.

Q. I put it to you, Mr. Crowder—

PRESIDING EXAMINER: Wait, Mr. Crowder has not finished. You asked if this is the kind of knowledge that you were going to put at the disposal of Mr. McCoin and Mr. Crowder said no, he does not have engineering knowledge.

Now, what knowledge were you going to put at Mr. McCoin's disposal, Mr. Crowder?

THE WITNESS: Employing the consultant engineer, your Honor, the Washington attorneys to help prepare the applications for the radio station, for a construction permit.

PRESIDING EXAMINER: Mr. Kenkel, will you continue, sir?

BY MR. KENKEL:

Q. Directing your attention, sir, to the WLIV application, BP-10326 and again Roman Numeral Section III that we discussed this morning, your statement as to revenues and expenses. A. Yes, sir.

Q. You understand, of course, that is the operational expenses don't you? A. Yes, sir.

[Tr. 1650]

Q. It says there, "Applicant's experience in radio." A. Right.

Q. Now Mr. McCoin had none? A. Right.

Q. But you did as to operational expenses? A. Yes, sir.

Q. It is your testimony that the cost of tube and tube life and cost of replacement tube is engineering and not operational—possible operational expenses? A. Sure, it would be operational expenses. I can't pinpoint a certain item as to cost. I didn't have that much interest.

Q. Going back to the 7-Up Bottling plant, you own that business yourself or do you own that with your wife?

MR. BILGER: Mr. Examiner, I don't think that question has any pertinency as to how the legal title is held in a bottling plant.

PRESIDING EXAMINER: I don't know that the ownership is such. The operation may have some importance but not the fact of ownership.

MR. LETTERMAN: I think it might, your Honor, because of the representations contained in the application. As you know Mr. Kenkel has laid the foundation that each of the answers in the application indicates. He had a 100 percent interest in the bottling plant. I take it Mr. Kenkel is now inquiring

[Tr. 1672]

A. I don't know anything about their frequency discounts. I don't know anything about their business operation. What you are trying to tell me, as I understand it, is I have to operate like WHBT does? Is that what you are trying to get me to agree to do?

PRESIDING EXAMINER: Wait, Mr. Crowder, you can't ask the questions.

MR. KENKEL: As a normal switch I had an answer but I didn't think it would be testimonial.

BY MR. KENKEL:

Q. Going back to the Hedrick account, Hedrick had only 84 spots? A. That is correct.

Q. I believe you told us on prior occasions that you discussed with Mr. Marshal the general question of the sale of WLIV, Livingston, didn't you? A. I told you that Mr. Marshal called me on the phone one day when I was in Georgia, said he had been talking to my brother-in-law.

Q. You were aware then that there were discussions concerning the sale of WLIV going on? A. According to Mr. Marshal. That is all I know about it. My brother-in-law had not told me.

Q. The only information you had then was from Mr. Marshal? A. That is correct.

[Tr. 1673]

Q. Your brother-in-law never talked to you about it? A. No, sir.

Q. So that the first discussion you had about sale of the station or of your interest was in 1964 when he made you the buy and sell proposition? A. I wouldn't say that.

Q. When was the first discussion? A. I don't remember.

Q. You don't remember at all? A. No.

PRESIDING EXAMINER: Well, to continue along that line, Mr. Kenkel, what were these previous discussions and about when did they occur?

MR. LETTERMAN: Could I be given a little enlightenment on the point? Are we talking about the time Mr. Crowder sold his interests to Mr. McCoin or the time that Mr. Conmain sold his interest plus the interest he had acquired from a third party?

MR. KENKEL: I am talking about 1954 when he sold his interest to Mr. McCoin.

PRESIDING EXAMINER: Do you wish to continue along that line, Mr. Kenkel?

BY MR. KENKEL:

Q. You do recall discussions with Mr. McCoin prior to 1964, don't you? A. Discussions about what, sir?

[Tr. 1674]

Q. Selling WLIV or your interest in WLIV. A. I told Mr. McCoin on several occasions I did not want to sell my interest in WLIV. He was interested in buying, he mentioned to me about buying my share in WLIV at least two years before I sold to him.

Q. That would make it 1964. How about prior to 1962? A. If he discussed it before then I don't recall.

Q. You don't recall any discussion earlier than 1962?

MR. BILGER: Mr. Examiner, that is not at all what he testified to. Any discussion is certainly much broader than the witness' answer.

PRESIDING EXAMINER: Yes. The answer was about Mr. Crowder selling his interest to Mr. McCoin. He does not recall anything before 1962. If there were any discussions he said I don't recall before 1962.

BY MR. KENKEL:

Q. You do recall, sir, because you told me you talked to Mr. Marshal. A. I don't remember the year, though.

Q. To refresh your recollection, sir, may I show you what has been marked for identification as WHBT Exhibit No. 29. Will you take a look at that and refresh your recollection?

MR. LETTERMAN: Is that document in evidence?

MR. KENKEL: No, I am sorry. WHBT Exhibit No. 29 for identification.

[Tr. 1675]

PRESIDING EXAMINER: That is dated 11-26-57. Is that right?

MR. KENKEL: Yes, sir.

THE WITNESS: That is Mr. McCoin's deal, not mine.

BY MR. KENKEL:

Q. Having looked at that does it refresh your recollection as to your discussion with Mr. Marshal, for example?

MR. BILGER: As to the date?

MR. KENKEL: As to the date.

THE WITNESS: I don't recall.

BY MR. KENKEL:

Q. Having looked at this it does not refresh your recollection as to a discussion with Mr. McCoin? A. No, sir.

Q. As of January 1, 1954, you had both WHBT and WDEH in your individual ownership, didn't you? A. As of when?

Q. As of 1955, January 1, 1955. A. No, sir.

Q. Wasn't it December 1954 that you dissolved the corporation, took them out of the corporation and put them into your individual ownership? A. I don't recall the date. It is in the record.

Q. Let me get the record.

MR. LETTERMAN: Was that the 316 you had there?

MR. KENKEL: That was the 316.

[Tr. 1676]

MR. BILGER: I don't understand the purport. We have been over this area at least once. Crowder Exhibit 33 lists the dates.

PRESIDING EXAMINER: If this, is a memory test, I don't know. Let us establish the fact if it is necessary as a basis for further questioning but let us not have any doubt upon the point.

MR. BILGER: I think Crowder Exhibit 33 sets forth the date when Mr. Crowder owned any of his three broadcast interests.

MR. LETTERMAN: What he is asking, your Honor, he wants to know when Mr. Crowder assumed ownership as an individual rather than as a corporate entity.

PRESIDING EXAMINER: I understand.

MR. LETTERMAN: He has also indicated prior to this time the reason is something to do with the possible tax advantages holding it as an individual versus a corporation.

PRESIDING EXAMINER: Undoubtedly it was to Mr. Crowder's benefit to own it as an individual rather than a corporation. A corporation has double taxation in a sense.

MR. LETTERMAN: Not always.

PRESIDING EXAMINER: Not always.

It depends on the circumstances, how it operates. I understand the situation. As I said before this morning, Mr. Crowder did this because he thought it was to his advantage, I imagine.

[Tr. 1677]

Let us continue.

BY MR. KENKEL:

Q. As I recall your earlier testimony the winding up was accomplished at the end of December 1954 and as of January 1, 1955, you commenced your individual ownership of these two properties? A. You will have to check the records is all I can tell you.

PRESIDING EXAMINER: Sometime after July 28, 1950 certainly Mr. Crowder assumed individual ownership of WHBT.

THE WITNESS: I know it was 1954, your Honor. I am not sure of the date.

MR. BILGER: Crowder Exhibit 33 contains a note that Mr. Crowder increased his ownership from 6.66 percent to 100 percent on July 28, 1950. It would have to be subsequent to that date.

PRESIDING EXAMINER: That is what I just indicated by my statement. That is right, Mr. Bilger.

Now let us get the exact date when Mr. Crowder became an individual owner.

BY MR. KENKEL:

Q. Showing you the Commission's files, sir, in the application to which we earlier made reference, that was executed by you on December 4, 1954? A. Right.

[Tr. 1678]

Q. This is an application for Commission approval to the assignment of the license of WHBT and the permit of WDEH from the Harriman Broadcasting, Inc., to you as an individual? A. I guess that is it.

MR. LETTERMAN: Let counsel for WHBT check it and we can stipulate what it is.

MR. BILGER: Yes, I so stipulate.

MR. LETTERMAN: When was it consummated?

MR. BILGER: Let me offer a stipulation to avoid this question.

I will stipulate with Mr. Kenkel that FCC Form 316 was filed, was received by the Commission on December 7, 1954 which requested permission to assign to Mr. Crowder as an individual the license of WHBT and a CP for WDEH.

The application was granted on December 14, 1954.

MR. LETTERMAN: When was it consummated?

MR. BILGER: Then over date of December 31, 1954, Mr. Crowder notified the Commission that as of midnight on December 31, 1954, the Harriman Broadcasting Company, Inc., was dissolved and that he then began to do business as an individual proprietorship.

That was received at the Commission on January 5 or 6, 1955. The arrow indicating the date is kind of in between I guess. Is that satisfactory?

MR. KENKEL: Fine.

[Tr. 1679]

PRESIDING EXAMINER: All right, it is so stipulated.

BY MR. KENKEL:

Q. Why did you effectuate that change in ownership? A. On the advice of my accountant.

Q. With respect to what? A. He said I would save some money since I was 100 percent owner.

Q. Subsequently as I read the records, and if I am wrong you can correct me, sir, as I find the contracts in the Commission's files, WDEH and WHBT, there was first contract for sale on WDEH, Sweetwater, January 1956, to Marto Broadcasting and then later the contract for sale of WHBT was entered into.

The contract to sell WHBT to Folkways Broadcasting Company, Inc., was April 13, 1956? A. Yes.

MR. BILGER: Are you just asking if that was the date of contract now?

MR. KENKEL: Yes.

MR. BILGER: And the predicate you made before is different?

MR. KENKEL: The predicate is the same.

MR. LETTERMAN: I think we need clarification.

There are two dates, given here. One for Marto in January 1956. I understood that to be the date of the application. And the other, April 13, 1956, purports to be the date of a contract.

[Tr. 1680]

MR. KENKEL: That was the WHBT contract. The Marto was the contract for WDEH.

MR. LETTERMAN: The thing I want to be sure of is that we are dealing with the contract in both instances because the date of the contract will not necessarily be the date of the application for assignment of transfer as filed.

MR. BILGER: Mr. Examiner, I might make a suggestion.

We are wasting a lot of time with the records. If he wants the dates we can go off the record. I will stipulate what the dates are.

PRESIDING EXAMINER: Of course, let us do that, if possible.

MR. BILGER: Let us not waste more time here.

PRESIDING EXAMINER: Off the record.

(Discussion off the record.)

PRESIDING EXAMINER: On the record.

MR. KENKEL: According to the file copy the date of the agreement between F. L. Crowder and wife and Marto Broadcasting Company, Inc., for the sale and purchase of WDEH, Sweetwater, Tennessee, is January 18, 1956. That was filed with application BAL-2240, received in the Commission's offices February 14, 1956.

MR. BILGER: It is so stipulated.

PRESIDING EXAMINER: All right.

MR. LETTERMAN: Before you go on do you have the other

[Tr. 1681]

date, was the date April 13, 1956?

MR. KENKEL: Yes, the witness agreed. The contract between Crowder and Folkways Broadcasting Company, Inc.

MR. BILGER: Did you elicit that from the witness' memory or on the basis of the record?

MR. KENKEL: On the basis of the record if my memory is correct.

MR. BILGER: Let us get it correct.

MR. KENKEL: According to the Commission files the agreement between F. L. Crowder and wife and Folkways Broadcasting Company for the purchase of WHBT is dated April 13, 1956. It appears in Commission file BAL-2321, received by the Commission on May 10, 1956.

MR. BILGER: It is so stipulated.

PRESIDING EXAMINER: All right.

BY MR. KENKEL:

Q. You testified that while you operated or owned WHBT, you had a remote studio in Rockwood? A. I did for about three years, yes, sir.

Q. Rockwood is in Roane County? A. Yes.

Q. Are you aware that some people from McMinnville, Tennessee, were interested in establishing a station in Rockwood? A. No, sir, not at that time.

[Tr. 1682]

Q. When did you become aware of it? A. After I sold WHBT.

Q. You were not aware of it any time prior to the sale of WHBT? A. Not that I recall, no, sir.

Q. You never had any discussions with anyone either in Rockwood or in Harriman concerning people from McMinnville looking around Rockwood with respect to a radio station? A. Not that I recall. You are asking me to remember back a long time, 12 years.

Q. In other words, you just simply can't recall, is that right? A. I don't recall.

Q. After the contract with Folkways Broadcasting Company, Inc., for the sale by you to Folkways of WHBT on April 13, 1956, was executed you made a public announcement about that fact in Harriman, didn't you?

MR. BILGER: Mr. Examiner, I don't understand the relevancy of this question.

PRESIDING EXAMINER: I don't either but I suppose it is going to lead somewhere. I assume somebody must have gotten to know about this transaction but let us hear where we go and then you may renew your objection, Mr. Bilger.

THE WITNESS: I don't recall making a public announcement.

[Tr. 1683]

BY MR. KENKEL:

Q. You were living in Harriman at the time? A. Sure. I still live in Harriman.

Q. Following the signing of the sale agreement with Folkways with respect to WHBT do you recall an article in the Harriman record, the newspaper there in Harriman, concerning that sale? A. It seems to me I recall an article. I am not saying I made a public statement.

Q. But you did see the article? A. I believe I remember something about an announcement or a news item or something in the newspaper.

Q. I will tell you, Mr. Crowder, that I unfortunately was not able to get a copy of the newspaper because, as you know in preparing some of the Exhibits back copies of the newspapers were not available but according to a copy made from the copy on file there the article in the Harriman Record concerning the sale of WHBT by you to Folkways, the Harriman record of April 19, 1956, contains this statement after reporting the WHBT transaction—

MR. LETTERMAN: Before he reads the statement maybe we had better take a look at it.

MR. BILGER: I am going to object to that.

MR. KENKEL: Can I show it to him to refresh his recollection?

[Tr. 1684]

MR. BILGER: You can show it to him. I don't want that in the record.

PRESIDING EXAMINER: Will you show him the item?

MR. KENKEL: It is not an item.

PRESIDING EXAMINER: It is an extract.

MR. KENKEL: Yes.

PRESIDING EXAMINER: Will you show it to Mr. Crowder and ask him generally about the matter without the details in the record at this point?

MR. BILGER: Don't answer until you have a question. There is no question pending that I know of.

BY MR. KENKEL:

Q. At the time the announcement was made with respect to your sale of WHBT what, if anything, did you say concerning Livingston, Tennessee? A. I don't recall. As I told you I did not make an announcement that I was selling WHBT.

Q. You did not? A. As far as I remember it was a news item in the local paper.

Q. The news item contained the information in your statement, sir, that you planned to start a new radio station in Livingston at that time. A. I don't remember the exact wording of the news item.

Q. You don't recall it?

[Tr. 1685]

A. No, I don't.

Q. Did you take any action with respect to the news item, telling the editor it was wrong or writing a letter to the editor?

MR. BILGER: I object to the question.

PRESIDING EXAMINER: It is objectionable. There is no requirement that somebody refute every statement made regarding him. It is well known in history that some people have the policy of never repudiating anything about themself.

Dr. Johnson for one.

MR. LETTERMAN: Samuel?

PRESIDING EXAMINER: Samuel Johnson, Thomas Jefferson, a lot of other people had that policy. There is no requirement that you refute everything that is said about you.

MR. LETTERMAN: Also everything printed in the newspapers is not necessarily true.

PRESIDING EXAMINER: I understand that. But the question is whether this is an adoptive admission because perhaps Mr. Crowder did not refute it.

MR. KENKEL: Not necessarily that.

I will follow it up with one question and don't answer it until your counsel has time.

BY MR. KENKEL:

Q. Do you agree, Mr. Crowder, that in April 1956 there were reports in Harriman that you planned to start a station

[Tr. 1686]

in Livingston, at that time?

MR. BILGER: Mr. Examiner, I object.

PRESIDING EXAMINER: It is objectionable.

If you object, it is sustained.

MR. BILGER: I do object and I would like to have what he said removed from the record.

PRESIDING EXAMINER: Mr. Bilger, you make your objection and then I will make a ruling.

MR. BILGER: I object to the statement. If the question is in the record I ask that it be stricken.

PRESIDING EXAMINER: The objection is sustained and the question is stricken.

BY MR. KENKEL:

Q. Mr. Crowder, in 1956 you purchased some term life insurance, did you not? New England Mutual? A. I don't recall.

Q. You don't recall? A. No, sir.

Q. How many life insurance policies do you have?

MR. BILGER: Mr. Examiner—

MR. KENKEL: Let me approach the bench on this.

(The witness was temporarily excused.)

PRESIDING EXAMINER: Bench conference.

(A bench conference was held.)

MR. KENKEL: When you buy life insurance you have to fill

[Tr. 1687]

out a medical statement and give whether you have consulted a doctor in the last five years.

PRESIDING EXAMINER: Think of this, Mr. Kenkel. He didn't say he had any physical ailments. He said he was in a nervous condition. The mere fact that his answers to a life insurance question do not contain a statement regarding this mental attitude towards something does not mean that there is a necessary contradiction to his statements here.

He said that he was perturbed by these personnel problems, the first manager was a womanizer, apparently. The second manager got into this political situation. That was the situation.

Now I don't know whether this is necessarily improper. It seems to me it is not pertinent.

MR. LETTERMAN: I would like to ask whether you actually have the application filed by him with the insurance company and you have it to produce in the hearing room.

MR. KENKEL: Not at this time.

MR. BILGER: In the first place there is something even further wrong with that in my judgment. You are obviously referring to the statement he filed that his doctor advised him to get out. Now on this insurance form this would not necessarily have been put down by him. It could have been a telephone call. It could have been a country club conversation on the golf course. It could have been a social

[Tr. 1688]

engagement.

He said, "I am nervous." The doctor could easily have said, "Get out of the radio business."

Therefore, it is valueless.

PRESIDING EXAMINER: You are objecting to it?

MR. BILGER: Yes, sir.

PRESIDING EXAMINER: I must sustain the objection, Mr. Kenkel. The objection is sustained on the basis of the discussion that we had while the witness was off the stand.

(The bench conference was concluded.)

Whereupon,

FREEMAN L. CROWDER

the witness on the stand at time of bench conference, resumed the stand and testified further as follows:

CROSS-EXAMINATION (resumed)

BY MR. KENKEL:

Q. Mr. Crowder, I show you what has been marked for identification in this hearing as WHBT No. 34, and you were present in the hearing room, were you not when it was offered and then rejected by the Hearing Examiner? A. I believe that is right.

MR. KENKEL: I want the record to reflect that I am perfectly aware that the Hearing Examiner has rejected this as of this time.

[Tr. 1697]

anything that it wanted.

We would expect that the other parties would do so, would do the same. I believe that we can meet, say, on Monday, before the Examiner to finish up with the housekeeping details of the hearing and specify which of these particular papers we intended to have the Examiner take official notice of if that is agreeable.

PRESIDING EXAMINER: Is that agreeable with counsel?

MR. BILGER: On behalf of Mr. Crowder it is.

MR. KENKEL: Yes, it is no problem.

PRESIDING EXAMINER: All right, it is agreed by counsel.

BY MR. LETTERMAN:

Q. Mr. Crowder, I have a few questions.

Mr. Crowder, do you know of your own knowledge whether or not the applicant for the Rockwood Station which eventually became WRKH, were businessmen with businesses in McMinnville? A. All I know is hearsay.

Q. In other words, you know none of these men personally? A. You say men?

Q. Men and women? Are there women? A. I understood it was just one man built the station, a Mr. Spivey. I never knew him.

Q. So at the time the construction for the station was acquired you did not know, I take it from what you say, whether

[Tr. 1698]

he was from McMinnville or some other town in Tennessee or another State? A. I heard he was from McMinnville.

Q. You did know that? A. I heard that.

Q. Based on what you heard, you did hear that he was from McMinnville? A. That is right.

Q. You did acquire, whatever this knowledge amounted to, on or about the time the construction permit for the station had been issued? A. That I can't recall.

Q. Whether it was at that time or later you just aren't able to say now? A. No, I don't remember.

Q. Referring to the Hedricks account, the question was asked about that, you said that you carried 84 spots for $1.50. A. Right.

Q. Thirty-second spot announcements. I just wanted to understand, in the context of the question it indicated to me that was the total number of spots you had carried for Hedricks to date. Is that correct? A. That is right.

Q. What I would like to know is whether or not this

[Tr. 1699]

necessarily means that during the period of a year additional spots would or would not be carried for Hedricks? A. He was supposed to carry 364 spots, the agreement, as I understood it. Mr. Scarborough called on him, not me. I haven't talked to him.

Q. But it was your understanding that the contract or the arrangement was for a total of 364 spots? A. That is right, at least 364 spots.

Q. All you are saying is that to date 84 of the potential 364 spots have been carried? A. Correct.

Q. Now with respect to WLIV, did you invest any capital or money in WLIV? A. Yes, sir.

Q. How much was it? A. Each of us put in $6250 as I recall or $7500, I don't remember. I would have to check my records.

Q. In the order of around $7,000? A. Correct.

Q. During the time you had an interest in the station did you receive a share of the profit or salary? A. Share of the profit?

Q. Can you tell us what that was on a monthly basis? A. No, sir.

Q. Can you approximate that?

[Tr. 1700]

A. No, sir.

Q. Can you give us any idea what it was on a yearly basis? A. I would think $5,000 to $6,000 a year.

PRESIDING EXAMINER: For each of you men?

THE WITNESS: For myself. My partner drew a salary.

BY MR. LETTERMAN:

Q. Your partner drew a salary over and above the disbursement of profits he might have received? A. Correct.

Q. In addition to the profits? A. Correct.

Q. A salary which you did not draw? A. That is right.

Q. Do you happen to know the amount of that salary? A. As I recall it was $100 a week.

Q. I would like to have a little clarification about another matter.

At the time you sold WDEH and WHBT, you indicated one of the reasons was because of health. A. Right.

Q. Can you describe a little more fully for us what your complaint was at that time? A. As I said in the statement I was a nervous wreck, it was nerves.

[Tr. 1701]

Q. Did you see a doctor about this matter? A. Yes, sir.

Q. Did you consult with him? A. Yes, sir.

Q. As a result of that you decided— A. I told him my trouble. He said, "Well, the only thing I can tell you is get out of the radio business if that is what is causing you to be so nervous."

Q. As a result you took the steps you took? A. Correct.

Q. With respect to the WHBT transaction, with respect to WHBT, Mr. Crowder, the purchase price was $80,000, $10,000 was paid down. This was in 1956, is that right? A. Correct.

Q. So that you were paid, according to the terms of the contract at the rate of $835 a month. Is that right?

PRESIDING EXAMINER: This has already been put in the record. Mr. Crowder previously testified that he knew the entire amount but he didn't know the installment details.

Is that right, Mr. Crowder?

THE WITNESS: That was on WDEH.

PRESIDING EXAMINER: I am sorry, Mr. Letterman.

BY MR. LETTERMAN:

Q. So you were being paid at the rate of about $800 a month. Does that sound correct?

[Tr. 1702]

A. A little over $800 as I recall.

Q. The contract called for $835. Is that more correct? A. $835 plus interest.

Q. That is right? A. Yes.

Q. These payments were made to you by whom? That is what I am anxious to know. Were the payments made by the corporate entity? A. By the corporation?

Q. Yes. A. Yes, sir, as I recall.

Q. In other words, up until the time that the note was sold to Mr. Burn or to Mr. Burn's bank, more correctly to Mr. Burn's bank, these payments were paid to you by Folkways, is that right? A. Correct.

Q. Was there any change in the method of payment to you when Mr. Crostwait obtained an interest in Folkways? A. No, all the payments were made by check.

Q. I mean by that even though the ownership of the corporation had changed after Mr. Tubb, et al had gotten out, did the payments continue in the same manner; in other words, did you receive the payments from the corporate entity? A. All the checks were on the plate of the Folkways Broadcasting Company.

[Tr. 1703]

Q. Did you hold the note yourself? A. I hold the notes, myself.

Q. In your home? A. Yes, sir.

Q. The payments were made to you at your home? A. They were mailed to me.

Q. In other words, the notes were not placed at a bank book collection and you received the payments? A. No, sir.

Q. When you were the licensee of WHBT on what frequency did you operate? A. WHBT?

Q. Yes. A. 1230.

Q. What power was the station when you had it? A. 250 watt frequency at that time.

PRESIDING EXAMINER: What is the present frequency of WHBT?

I can ask Mr. Kenkel that.

MR. KENKEL: I don't know what it is. I will check the record.

PRESIDING EXAMINER: Do you know, Mr. Letterman?

MR. KENKEL: 1600 kc.

BY MR. LETTERMAN:

Q. So you were operating on 130 kilocycles with 250 watts

[Tr. 1704]

power at the time you were the licensee of WHBT? A. Correct.

Q. I just ask you if you recognize this as a broadcaster, that if a station were to operate on, let us say first of all, with 5,000 watts as contrasted to 250 watts, the cost for power, that is electrical current for the station would be higher, would it not? A. I am sure it would, yes, because of the transmitter.

Q. Because of the size of the transmitter? A. I would think so.

Q. In other words, are you familiar enough with the operation of radio stations to know that this would be appreciably higher? A. No, sir.

Q. With respect to higher operation on the dial, are you aware as a broadcaster that with the 970 frequency and 500 watts you can get just about as much coverage as a station operating on 1600 kilocycles with 5,000 watts? A. That is what my consultant engineer tells me, yes.

Q. This is not something that you have independent knowledge of in the sense that you have to rely for technical information of this nature on what your consulting engineer would tell you? A. Correct.

Q. As a general knowledge did you know this to be so?

[Tr. 1710]

Q. Do you plan to have any? A. I do not.

Q. In other words, you do not have any plan whatsoever to perhaps negotiate with CBS to acquire and present the programs that were presented up to a fairly recent date by WHBT? A. No, sir, I don't.

Q. I would like to ask you a few questions about Mr. Burn.

Sir, you said there were two business contacts or two contacts that you had were Mr. Burn. One was at the time you negotiated the least for the– A. Studios.

PRESIDING EXAMINER: Wait until he finishes his question.

BY MR. LETTERMAN:

Q. I was going to say remote studio in Rockwood and the other time there was a meeting between Mr. Burn and yourself and other persons, attorney, Mr. Crostwait, at which the note was sold to the bank. Those were the two occasions? A. Right.

Q. Your remote studio was located in the bank building in Rockwood, was it not? A. Yes.

Q. Mr. Burn has an office in Rockwood does he not? A. I understand he does, yes, sir.

Q. The remote studio was operative for a period of three years, was it not?

[Tr. 1711]

A. Approximately.

Q. During this course of time did you originate any remote broadcast from Rockwood? A. Yes.

Q. When I say you I only meant your station. A. Right.

Q. Were you ever present during the actual conduct of a remote broadcast from Rockwood? A. As I recall one time.

Q. Only on one occasion? A. Right.

Q. Do you do any business in Rockwood–I am not talking about radio; other than radio–do you have any business in Rockwood such as in the conduct of your distribution of the bottle products which you disburse throughout the area? A. No, sir. I don't have any franchise in that area. The only business I have in Rockwood is with my accountant. That is where his office is.

Q. Whereabouts in Rockwood? A. It is on the main street.

Q. It is not in the bank building? A. No.

Q. Do you know where Mr. Burn resides? A. No, sir.

Q. You don't know where his home is?

[Tr. 1712]

A. I do not.

Q. Do you know whether he lives in Rockwood as distinguished from Harriman? A. No, sir.

Q. Does he live in Harriman? A. He does not live in Harriman.

Q. Do you ever have occasion to meet Mr. Burn at, let us say, meetings—do you have a local Lyons Club? A. Yes, sir, but I am not a member.

Q. You are not a member of it? A. No.

Q. Therefore you would not necessarily have seen him there? A. As I stated I have seen Mr. Burn once.

Q. I know that. I am trying now to expand on that. Are there any civic clubs in Harriman that you are a member of? A. Not at the present time. I am a member of Kiwanis but I have a leave of absence.

Q. Is there a local club, for example, golf club, in Harriman? A. Yes, sir.

Q. There is? A. Yes, sir.

Q. Is it a private club? A. Yes, sir.

[Tr. 1713]

Q. Are you a member of it? A. No, sir. I was at one time but I am not now.

Q. During the time you were a member do you know whether or not—I am asking, do you know—Mr. Burn was a member? A. No, sir, I don't.

Q. You don't know? A. I don't know.

Q. At least you never saw him there to the best of your ability to recall? A. No, sir.

Q. Just so that I am absolutely clear on this you are stating categorically that the only occasion that you could recall, aside from the political meeting that you mentioned and the ones mentioned in your testimony, the only times that you ever had any contact with this man was on the two occasions which we have previously mentioned in my questioning? A. Business contacts.

Q. Business contacts right now. A. Right.

Q. Any other type of contact? A. Not that I recall.

Q. Walking along the street? A. No, sir.

Q. I would like to ask you a few questions concerning the predicate you laid with Mr. Scarborough for the conduct of

[Tr. 1714]

the survey made by Mr. Scarborough on your behalf. Do you recall having a meeting with Mr. Scarborough in which you discussed with him this survey? A. I wouldn't call it a meeting. I was visiting his home.

Q. It was a casual visit at his home? A. Correct.

Q. Whatever you want to call it you met at one time with Mr. Scarborough and you did discuss the survey? A. Correct.

Q. At that time did you discuss with him or show him any of your papers which set forth the programming plans of yours for WXXL? A. No, I didn't. I had already filed the application.

Q. You had filed the application? A. Yes.

Q. Then you received a letter from Mr. Jorgensen? A. Correct.

Q. He said the Commission was interested in the survey? A. He did not say the Commission. He suggested we make a survey.

Q. He suggested you make a survey. Did you know the purpose of the survey? A. No, I didn't.

Q. Did he indicate to you the type of survey that he

[Tr. 1715]

thought would be a useful one? A. No, sir, I just left it up to Mr. Scarborough.

Q. I am saying did Mr. Jorgensen indicate to you in any communication with you the type of survey he had in mind, the one he thought the Commission might possibly be interested in? A. No, I didn't, not that I recall.

Q. Let me ask this question.

Did you discuss with Mr. Scarborough your programming plans in any degree? For example, did you tell him that WXXL had planned to have discussion programs at which you were going to present the Mayor of the town together with the other city officials that might be important members of the community? A. I believe I told him I had plans to that effect.

Q. To have certain discussion programs in which the Mayor and other important city officials would participate? A. Right.

Q. Did you give him any instructions as to the contact that he would possibly make with the persons that would participate in such programs? A. No, sir, I didn't, as I recall. Mr. Scarborough knew as much about Harriman as I do. I left it up to him.

Q. You left the survey up to him? A. Correct. As I stated, I was very busy constructing an addition to my bottling plant in Livingston, trying to beat the winter.

[Tr. 1716]

Q. Did you give him any instructions at all that you can recall as to how the survey was to be conducted? A. Not that I recall, no.

Q. Once the survey was completed and you received the information, is it my understanding what you did was take the letters, forward them to Washington to be included in your proposal? A. I sent them to Mr. Jorgensen, yes, sir.

Q. After you obtained the survey material did you attempt to adjust or amend your program proposal to reflect any information obtained as a result of the survey? A. No, sir, I don't believe I did.

Q. Sir, I would like to refer you to Section IV of the application BP-10326, F. L. Crowder and R. H. McCoin, audio broadcasters, for a new standard broadcast station to operate on 920 kilocycles at Livingston, Tennessee, specifically Section Roman IV, page 3.

To better understand your testimony I am going to ask you a question about this. I preliminarily would like to ask you if you would, to go back in time to when you made the arrangement with Mr. McCoin with respect to the Livingston operation.

As I understand what you have told us thus far, the arrangement would be that you would be active in formulating the plans for the station, seeing that they were implemented, contacting the consulting engineer and a lawyer and seeing that the

[Tr. 1717]

station got on the air, and during this period of time that you would act as the manager of the affairs of the station, is that right? A. Correct.

Q. But after that you made it very clear to Mr. McCoin, and I want to be sure if I am properly characterizing my understanding, that you would not participate on an active basis in the day-to-day operation of the station? A. That is correct. That was our agreement.

Q. That is a fair statement of what the agreement was? A. Correct.

Q. Now when you filed the application at Section Roman IV, page 3, it says, "State applicant's general plans for staffing the station including the number of employees in each department, et cetera."

Under there it says, "General Manager, F. L. Crowder, Harriman, Tennessee."

Now I ask you this question, Mr. Crowder. At the time you filed this application you were a broadcaster of some experience, were you not? A. That is correct.

Q. Didn't you consider this as fairly representative to the Commission that as of the time this application was filed that you were held out to be the general manager of the station when the station actually went on the air? Wasn't that what

[Tr. 1718]

this was intended to show the Commission? A. I was the general manager until the station went on the air.

Q. After the station went on the air. What I am saying to you, sir, is that this application when filed, was this not an indication by you or the applicants that it was the intention of the applicant for you, Mr. Crowder, to be the station's general manager when the station became operative?

MR. BILGER: Will you identify this as 301 for the CP to begin with?

MR. LETTERMAN: BP. I gave the BP number which is the only number associated with construction.

THE WITNESS: What was the question. I have forgotten.

MR. LETTERMAN: Could you read it back.

(The pending question was read by the Reporter.)

THE WITNESS: According to this file, yes, but that is when I made an error. I should have notified them.

BY MR. LETTERMAN:

Q. This really did not reflect the overall future plans of yourself and Mr. McCoin? A. No, sir.

Q. But you do agree as stated without any reservations it would indicate what I said? A. Correct.

Q. Now this one last question and this concerns the

[Tr. 1719]

billiard parlor. I would like to ask you, sir, about that so it will be clear on the record.

How long have you had an interest or owned this billiard parlor? A. Since 1944.

Q. Has your interest in this business venture been constant? In other words, has it been a 50 percent interest at all times or 40 percent interest or has it varied? A. In 1944 it was 100 percent.

Q. How long did you hold the 100 percent interest? A. As I recall, four or five years.

Q. About four or five years? A. My interest now is 66-2/3 percent. But I own the building 100 percent.

Q. You say you held the 100 percent interest for approximately five years from 1944 when the business was acquired? A. Right.

Q. That would bring you to approximately, and I know we are estimating these dates to the best of our ability, it would bring us to approximately 1949, would it not? A. Right.

Q. In 1949 did you sell an interest in it? Was this when you sold the third interest? A. That is approximately it, I guess.

Q. To whom did you sell this interest?

[Tr. 1720]

A. To a gentleman by the name of Derrick.

Q. Has Mr. Derrick held this interest from the time you sold it; is he the person that has this third interest in it to the present time? A. He is still with me.

Q. The same person? A. Right.

PRESIDING EXAMINER: Off the record.

(Discussion off the record.)

PRESIDING EXAMINER: On the record.

MR. LETTERMAN: In view of the extensiveness of the examination of Mr. Crowder by counsel for Folkways Broadcasting Company and in view of the agreement which I am relying on now that we will be able to get in, and I will be very specific, balance sheets filed with the various applications in which Mr. Crowder had an interest, including those involving WLIV and WHBT when he owned it and WDEH, together with pertinent information concerning the reasons for the sale of the station and any applications for assignment of the license or transfer of control of the station—as long as we have an understanding that we can have a meeting to get that plus any other material in the Commission's files that either party would request, in order that there will be no unfairness, what the Broadcast Bureau might be interested in they could offset by any other information they want, so long as we have this

[Tr. 366]

suggested was that the parties be supplied with them. Is that right, Mr. Letterman?

MR. LETTERMAN: Yes, in view of the ground rules which are used in this particular proceeding, that is right, just a copy of any material that official notice is requested of.

PRESIDING EXAMINER: All right; let us not burden the reporter too much with that. Would you be so kind as to merely give copies to the parties.

MR. KENKEL: All right; I am doing that and giving the Examiner and Mr. Letterman and Mr. Bilger copies.

PRESIDING EXAMINER: All right.

MR. KENKEL: I may say I hand-copied the material yesterday, took it back to the office, and had it typed. I believe it is correct, but of course each party has the right to check it against the originals.

PRESIDING EXAMINER: All right; we can mark this for ourselves as "official-noticed."

MR. KENKEL: WHBT now calls Mr. Harry Burn.

Whereupon,

HARRY THOMAS BURN

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KENKEL:

Q. Would you state your full name, sir.

[Tr. 367]

A. Harry Thomas Burn.

Q. Would you spell the last name? A. B-u-r-n.

Q. And what is your residential address? A. Rockwood, Tennessee.

Q. How long have you lived in Rockwood? A. About 16 years.

Q. Do you pursue any profession or occupation? A. Well, I practiced law actively until 1950. Since then, I have only done it to some degree.

Q. Until 1950 you actively-When did the period of active practice begin? A. Beginning 1923.

Q. You are a licensed lawyer in what State, sir. A. Tennessee. Q. Any other occupation or profession? A. I have been connected with banks since I was 21 years old. In 1950 I was elected President of the First National Bank and Trust Company of Rockwood. I was active in the bank, you might say the manager, until January, 1965. I am now Chairman of the Board and Trust Officer.

Q. Directing your attention, sir, to your experience as a lawyer first, would you briefly tell us, give us examples of the type of cases you have handled? A. My practice was largely in financial matters. I

handled, I was attorney in the first municipal bankruptcy under the Willcroft Act, Sweetwater, Tennessee. Of course, there was another case after that. I had the first 77(b) corporate reorganization in the U. S. District Court at Knoxville for Shrugs Realty Company, which still exists. Most of my practice as a lawyer was handling complicated financial matters for corporations in distress in the thirties.

Q. In that connection, what, if anything, did you learn about business operations and financing? A. Naturally, you had to become a student of the economic picture in the different communities involved. Of course, over the years I presume I would get all of the different types of reports from universities and the Federal Reserve Board and so forth. You have to keep informed on those subjects.

PRESIDING EXAMINER: Now, this is over the years, not only during your practice of law, but in your connection with the bank?

THE WITNESS: More particularly since I have been with the bank.

PRESIDING EXAMINER: All right; thank you.

BY MR. KENKEL:

Q. The First National Bank and Trust Company is in Rockwood? A. Yes.

Q. Now, as the banking officer, would you briefly tell us

[Tr. 369]

your responsibilities and particular connection with businesses? A. I was the loan officer. I of course handled personnel, too. The bank, when I went with it, was a two-million-dollar bank and today it is $8-1/3 million.

PRESIDING EXAMINER: That is deposits?

THE WITNESS: Well, that is total resources. Capital is about $600,000.

PRESIDING EXAMINER: I see.

THE WITNESS: Deposits is about $7-1/2 million.

BY MR. KENKEL:

Q. Go on. A. We operate two branches, and one of them is in Harriman, Tennessee, where the two radio stations are, and the other one is a bank that is only 18 months old, in Kingston, Tennessee, the County Seat. I have spent most of my time at the County Seat Branch in the last 15 months.

Q. And as a loan officer, you would have occasion to discuss business matters with businesses and enterprises desiring finances? A. Yes, every day, numerous business concerns. That is my line. I had a great many customers out of Harriman. Harriman had only one bank, and Rockwood had one bank, and naturally I had numerous customers in Harriman.

Q. Mr. Burn, do you know Freeman L. Crowder? A. Yes; he was a tenant in our building in Rockwood in

[Tr. 370]

our main office and I solicited and he agreed, we had a lease, and I built a studio for him on the third floor of the bank building for WHBT when he operated it.

Q. You have known him since the time you built the studio? A. I knew him before that socially, casually.

Q. Mr. Burn, what, if any, discussions or considerations have you had in Roane County with respect to radio broadcasting and what experience or exposure have you had in connection with it? A. Of course, I even had monthly financial reports from WHBT since we became their banker. Before that, the civic leaders of Rockwood thought they should have a radio station, and I made a study of the economy and possible sources of income for it.

Our county is peculiar in that it has about a 40,000 population. It has four towns: Kingston, Harriman, South Harriman, and you might say Midtown and Rockwood, and really that is five towns, although South Harriman has been included in Harriman census.

We have three newspapers, and the communities are entirely too jealous of each other for small towns and we had a small bank that we are having to spend money for advertising and all of the media, in all of the media; that meant that a bank that had to be advertising in one newspaper was advertising in three,

[Tr. 371]

and it was advertising through one radio station when it considered one for Rockwood; it would have been another financial burden for us if we kept up our program.

It is really a conclusion on my part based on economy of the town and on what the merchants would spend, but I earlier concluded—

MR. LETTERMAN: If he is about to give conclusions, I object to it.

PRESIDING EXAMINER: Yes.

MR. LETTERMAN: In other words, it is a recital, your Honor; I take it he is being qualified for some purpose or another, but I wouldn't want to sit here and have my silence be understood that I am acquiescing that he has the requisite qualifications to give opinions in this proceeding; so if he does give an opinion at this point in time or conclusion which is in the form of an opinion, I would like my objection noted if he gives any such opinions until such time as his qualifications are shown.

PRESIDING EXAMINER: I suggest, Mr. Letterman, you make objection to specific answers. So far the only conclusion that Mr. Burn has mentioned is that the towns are entirely too jealous of each other. I think that is a conclusion that can be drawn by a person in Mr. Burn's position, certainly. He could tell us about the communities' general spirit and morale and that in itself does not trespass on any real expert-opinion

[Tr. 372]

territory.

MR. LETTERMAN: Your Honor, fine; I understood that would be the case with respect to that one comment of Mr. Burn. However, I did—in other words, if I am committed to raise my objection after the statement is made, that is all right.

PRESIDING EXAMINER: All right, yes; I won't expect you to jump in and cut off Mr. Burn. Let us see what Mr. Burn says and then you may move to strike.

THE WITNESS: Well, the economy of Rockwood would not support as it should be necessarily supported, a radio station.

MR. LETTERMAN: I object.

PRESIDING EXAMINER: Yes, that objection is sustained and it is stricken. We need more of a foundation, Mr. Kenkel, than that, than has already been stated for that conclusion.

BY MR. KENKEL:

Q. As the result of your consideration of the factors that you have testified to, sir, did you come to a conclusion? A. I did come to a conclusion, and based on that conclusion, I solicited Mr. Crowder to put in a studio in Rockwood to be operated through the Harriman transmitter.

Q. And did you have a conversation with Mr. Crowder at the time? A. Well, the same argument I would have advanced here if I could, I gave to him.

Q. Do you recall what you told him at that time?

[Tr. 373]

A. Yes.

Q. Could you tell us what you told him? A. Well, I just told him—

PRESIDING EXAMINER: All right.

THE WITNESS: I told Mr. Crowder that the total revenues to a radio station in Roane County should be channeled through one organization because it could serve properly and should not be divided between two overheads and two expenses of operation.

He agreed; at least he leased the facility from me.

MR. BILGER: I move to strike "He agreed."

PRESIDING EXAMINER: Do you move to strike the whole statement?

MR. BILGER: No; I move to strike the words "He agreed." I understand the witness was testifying to a statement he made to Mr. Crowder.

PRESIDING EXAMINER: I understand. I was wondering if there was a motion to strike that as a hearsay declaration, in any event, and since, or as an adoptive admission it might be one thing.

If Mr. Burn is now testifying that Mr. Crowder agreed to this, that might be in the nature of an admission; I don't know whether that argument is advanced.

MR. BILGER: I shall advance it and move to strike it on that ground.

MR. KENKEL: Your Honor, I don't see the hearsay problem here you have raised. The person with whom the conversation was

[Tr. 374]

held is the applicant. Let the record show that the applicant is in the room here and of course the applicant's counsel has every right of cross-examination. I can't see the hearsay problem.

PRESIDING EXAMINER: The hearsay proposition is that Mr. Burn makes a statement of a fact. Now, it is made in the presence and to the party in this case, the opposite party. The opposite party says Mr. Burn agreed to it. That is not more than an adoptive admission. That is an actual admission on those facts.

Now, to that extent, if Mr. Crowder did not challenge that in any way and say he built the studio in Rockwood, I think that may stay in the record on that basis. Now, this is the testimony of Mr. Burn. Now, he may be cross-examined on it, Mr. Bilger.

MR. BILGER: Well, my motion to strike—

PRESIDING EXAMINER: As a conclusion, "he agreed"?

MR. BILGER: Correct.

PRESIDING EXAMINER: Yes, I agree that must be stricken.

MR. KENKEL: The single word "agreed"?

PRESIDING EXAMINER: Yes. May I say Mr. Burn may testify to the conversation or lack of conversation that Mr. Crowder had with him. He should not testify to conclusions.

MR. LETTERMAN: But, your Honor, my concern with the testimony just given is that I want to be sure that it is going into

[Tr. 375]

the record only as Mr. Burn's personal viewpoint on the subject of the competition in the area, the subject of the station of the area, only as to his particular viewpoint.

PRESIDING EXAMINER: Except insofar as we have any admissions here.

MR. LETTERMAN: Well, that is different—with respect to the admission. I am talking about the economic predicate for the conversation between the two gentlemen. As long as he is testifying as to his own personal views as to what the competitive situation is, what the economic situation is, I do not object to that. But I, in other words, I am drawing a distinction between such testimony and opinions or conclusions of the gentleman.

PRESIDING EXAMINER: All right; I suppose any witness testifies merely to his personal opinions, and he is not appearing here in an official capacity. Mr. Burn is testifying as an individual.

MR. LETTERMAN: Not as an expert.

PRESIDING EXAMINER: Well, I don't know; if Mr. Kenkel can qualify him as an expert on the economy of the area, that would be another story. I can't make a ruling on that point now. But in any event, Mr. Bilger's objection is sustained and the statement "He agreed" is stricken. Now we must get the conversation in itself or as much as Mr. Burn remembers.

[Tr. 376]

BY MR. KENKEL:

Q. Mr. Burn, directing your attention to that conversation, what, if anything, did Mr. Crowder say or do as you— A. He made—

PRESIDING EXAMINER: One second.

MR. LETTERMAN: If you are going to testify to a conversation, could we place it in time?

THE WITNESS: I am not going to answer as to the conversation but say he executed a lease for the building, for the studio.

PRESIDING EXAMINER: All right; let's get the entire scene, as it were. Let's see what happened. All right; when it happened, as Mr. Letterman says; the year and so forth.

BY MR. KENKEL:

Q. Was there more than one conversation? A. Several and telephone conversations and in my office, too; I don't think I was in his office.

Q. Your office was where? A. The main office of the bank, Rockwood, Tennessee, the corner of Rockwood Street and Chamberlain Avenue.

Q. Can you fix the conversation in point of time, sir? A. Well, I don't remember exactly the term of the lease. I do know that the lease extended beyond the time, a few months beyond the time that WRKH began operation. The studio was vacant a few months.

[Tr. 377]

MR. LETTERMAN: That does not help, your Honor, as to dates.

THE WITNESS: I would be glad to obtain a certified copy of the paper and file it here.

PRESIDING EXAMINER: No, Mr. Burn; you make your best effort to tell us about when this happened.

THE WITNESS: I would say it would be 19—well, it is 10 years ago since most of these things took place and this lease was executed or the premises were leased, I think, five years before that by WHBT. But I don't know whether it was a five-year lease or three-year lease.

PRESIDING EXAMINER: Mr. Letterman.

MR. LETTERMAN: So I might be clear, are we talking about a conversation that occurred approximately 15 years ago?

THE WITNESS: Either 13 or 15. That is the time that WHBT came into Rockwood with a remote studio, in our bank building.

PRESIDING EXAMINER: All right. This occurred, this lease was executed in whose office, Mr. Burn?

THE WITNESS: In our office, I would say in our office in the bank building, because I mailed it to them and they could have been signed and mailed back.

PRESIDING EXAMINER: In what town?

THE WITNESS: In Rockwood. Rockwood and Harriman are about 10 miles apart all in the same county.

PRESIDING EXAMINER: All right; let's continue, then.

[Tr. 378]

BY MR. KENKEL:

Q. Subsequently, sir, to this leasing of the office—Strike that; I will start again. What, if anything, did the bank do when the lease was signed? A. We spent thousands of dollars, three or four thousand dollars to convert the third floor, which had no windows in it, into what we thought was a model small-town studio, insulated walls, and windows were put into the studios at a certain angle and things of that nature, which I, as a layman probably don't understand but know they did do it.

Mr. Crowder outlined or set up exactly what he wanted in the way of a facility, and we built it.

Q. Did you have occasion on other occasions to have a conversation with Mr. Crowder concerning radio broadcasting with particular respect to the economic aspects thereof? A. I saw him in our building every few days and visited with him occasionally, more socially than business, of course, but I kept contacts with him.

Q. Now directing your attention, sir, to a subsequent year, did there come an occasion when you had a conversation with Mr. Crowder concerning radio broadcasting? A. Well, about 10 years ago, some financial interests from McMinnville, Tennessee—and that is in middle Tennessee, about 100 miles west of Rockwood—and they came into the Rockwood picture and obtained a license ultimately, of course

[Tr. 379]

maybe a building permit first, and they started a radio station now known as WRKH; Rockwood, McMinnville, and Harriman, WRKH; and about that time it became known that Mr. Crowder was either selling or negotiations had some existent status, was selling WHBT, and I believe the new station at Sweetwater, Tennessee, he put in, WDEH I think are the call letters; and I, in a conversation with Mr. Crowder, told him I still—well, I am about to get into my opinion again—that I regretted seeing another station come into Rockwood, because of the factors that I had already discussed with him, that I had not changed my judgment; and his comment on that was that he had learned the hard way that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, by implication anyway, you had to, to do it, through a subsidy, and then selling the station.

That was the reason he was not concerned with local competition. He didn't propose to operate a station anyway other than until the time he could sell it.

Q. Do you recall the place? A. I naturally had a lot of conversations with him, and I think it was in the front lobby of the bank, the main office of the bank.

Q. You place it about 10 years ago? A. Yes, about 10 years ago this spring.

[Tr. 380]

Q. Now, sir, were there other occasions when you discussed radio business and radio economics with Mr. Crowder? A. Well, we had conversations of a general nature, particularly after he filed an application for what is now WXXL. He had told me in his previous conversations the McMinnville was virgin territory, a small town that had no station, to get you a license and franchise and, as I say, build it up.

Well, when I brought the note on WHBT, I presumed that was the purpose of the financing, was to go into some other territory, because I was somewhat flabbergasted when he, in a few weeks, filed an application for a station to compete with the very station on which he had sold me the notes that had the lien.

MR. BILGER: I object.

PRESIDING EXAMINER: Yes. Do you move to strike?

MR. BILGER: I do.

PRESIDING EXAMINER: That is granted and the motion to strike is granted; that is, "I was flabbergasted" and so forth is stricken.

THE WITNESS: The—

MR. BILGER: There is no question pending.

BY MR. KENKEL:

Q. You said you bought the notes. Individually or the bank? A. The bank.

Q. What note was this?

[Tr. 381]

A. That was the note that Mr. Crowder had taken as the lien on WHBT when he sold it. That is when he sold WHBT to Folkways Broadcasting Company, Inc.

Q. Did there come a time, Mr. Burn, after the bank bought the note, that you learned that Mr. Crowder had filed an application for another station in Harriman? A. Yes.

Q. And what, if anything, did the bank do? A. Well, we came into this case with a petition, objecting to the new station.

Q. After the objection was filed, did you have any conversations with Mr. Crowder concerning it? A. I asked him why he undertook to bring a third station into Roane County instead of going into a town that had no radio station, that he had told me would be his policy, and he said that the management of WHBT was so incompetent that they undertook to operate a metropolitan station in a small town, that they had changed the location of the station on the dial from the middle of the dial to the far right and that they had gone from 5,000 watts power, I believe it is that, and that the tubes they used so many times were not the tubes used when he operated the station and that there was a certain mortality among the tubes due to lightning or wear and tear and that one item was a considerable expense to the station and the policy of management of that sort would ultimately create a serious financial

[Tr. 382]

problem and that he wanted WXXL to be in position to fill the void. Now, the words "fill the void" are my words and not his.

PRESIDING EXAMINER: Do you remember exactly what he said, to the best of your ability, Mr. Burn?

THE WITNESS: Well, the main thing he did tell me was the cost of the tubes and also the change of the location on the dial. That is the material part of the conversation.

PRESIDING EXAMINER: Thank you.

BY MR. KENKEL:

Q. Do you recall when this conversation occurred? A. I don't know whether it was before or after we filed our exception. I saw him in Harriman at some kind of a meeting, and I thought it was not appropriate for me to ask him why he changed his policy.

Q. After that occasion, were there any other discussions concerning economics or financial aspects? A. I don't believe so. I don't recall any.

Q. Did you ever have any conversations with Mr. Crowder on other occasions when you recall such subject matters were discussed? A. Not with reference to radio stations.

MR. KENKEL: That is all I have.

MR. LETTERMAN: May I ask one question for clarification?

PRESIDING EXAMINER: Surely.

MR. LETTERMAN: Did you purchase a note without recourse?

[Tr. 383]

THE WITNESS: Yes, I did, reluctantly. Now I know why it was that way.

MR. BILGER: Are you finished with the witness, Mr. Kenkel?

MR. KENKEL: Yes.

PRESIDING EXAMINER: Mr. Bilger.

CROSS-EXAMINATION

BY MR. BILGER:

Q. Mr. Burn, when did you first meet Mr. Crosthwait? A. It was a year or two before he ever came to Harriman to operate WHBT.

Q. Will you place the year, please? A. No, I can't fix that year.

Q. When did he come to Harriman to operate WHBT? A. Well, I would say about three years, two to three years after Folkways bought it. There was another man that operated it that came out of WSM in Nashville.

Q. In 1956, Mr. Burn, when WHBT was sold by Mr. Crowder to what was known at that time as Folkways Broadcasting Company, you had no connection with it, did you? A. No.

Q. And do you know who at that time composed Folkways Broadcasting Company, who the stockholders were? A. Only by hearsay.

Q. Well, it was not Mr. Crosthwait, was it? A. No; two country music men out of Nashville.

[Tr. 384]

Q. I don't know if they were country music men, but the names were Messrs. Snow and Tubbs? A. Yes.

Q. You had no connection with them? A. Well—

Q. Your bank has no money involved? A. I loaned those men money as an individual.

Q. Did your bank or you personally? A. Yes; I never loaned any money. It is always the bank; I had no money.

Q. Let us distinguish for the record between you personally and the bank. A. When I say, "I loaned it," I mean I, as an officer of the bank, loaned it. I am the loan officer.

Q. Are we talking about the First National Bank and Trust Company of Rockwood? A. Yes.

Q. Is your testimony now that that bank loaned money to Messrs. Tubbs and Snow, Folkways Broadcasting? A. I think the notes were generally made in the name of the individuals. I know that Clarence Snow sent me his personal financial statement and asked me to keep it in my personal box.

Q. So at that time, your bank, then, was a lender, in 1956? A. Possibly, at least during the time that those two men

[Tr. 385]

were the essential stockholders I had financial dealings with them.

Q. Were you aware at the time that Mr. Crowder had taken back a mortgage and a note on that property when he sold it to

Folkways Broadcasting? A. I don't know when I learned it but of course you know I later bought, or the bank later bought the note.

Q. I know your bank did. Now, there came a time, did there not, Mr. Burn, when the then Folkways Broadcasting Company sold the radio station to Mr. Crosthwait and others? A. I wasn't in on any of those negotiations.

Q. Well, is it not a fact that that is the note that your bank bought, was the Crowder note at the instigation of Mr. Crosthwait when it was refinanced? A. Well—

Q. Is that not a fact, Mr. Burn? A. The note was of the Folkways Broadcasting Company, Inc.

Q. Through Mr. Crowder? A. And I did buy that note.

Q. But you bought it at the instigation of Mr. Crosthwait, did you not? A. I think Mr. Crowder had been negotiating a sale to me of the note at times before that.

Q. Is it your testimony that Mr. Crowder came to you, to your bank, to discount that note?

[Tr. 386]

A. He came into my office at the bank to sell it to us—he and his wife.

Q. When was that, sir? A. Well, about the time we took it over.

Q. When was that? Can you fix a date? A. About 10 years ago, 10 years ago this spring.

Q. And did you buy the note, then discount the note directly from Mr. Crowder? A. Yes.

Q. What was the discount price? A. Well, of course, the loan I took at its face value and it was between 20 and 25 thousand dollars.

MR. LETTERMAN: I don't understand the answer. How much was the face value of the note?

THE WITNESS: Well, I am talking from memory; I said it was between 20 and 25 thousand dollars, and I think it was 23,000 and some hundred dollars.

MR. LETTERMAN: What did you pay for it?

THE WITNESS: That is what I paid. A banker, when he discounts a note, takes the note. He does not shave the principal. I paid him the unpaid principal on it.

BY MR. BILGER:

Q. You paid to Mr. Crowder? A. Yes.

Q. That freed the Folkways property from the lien that

[Tr. 387]

note represented, did it not? A. Yes, but I took another note directly from them.

PRESIDING EXAMINER: When you say "a lien that note represented," was that the note that accompanied any sort of a mortgage?

THE WITNESS: Yes. It was a chattel mortgage on personalty and a deed of trust on realty.

PRESIDING EXAMINER: I see; and the assignment of the note carried with it the assignment of the security?

THE WITNESS: That is right.

BY MR. BILGER:

Q. Now, was this part of a purchase of Folkways by Mr. Crosthwait? A. Not that I know of. I never heard that. As far as I know, he had already traded with those people, with the Nashville interests.

Q. I don't follow your answer. What do you mean, "Nashville interests"? A. These two country music boys that owned the controlling stock. I don't know that when Mr. Crosthwait came there that he even bought the station. I thought he came as manager for them.

Q. Is it your testimony, then, that you discounted or paid off the Folkways note for Mr. Crowder at Mr. Crowder's request and that it had nothing to do with the purchase of Folkways by Crosthwait?

[Tr. 388]

A. I say it was probably concurrent but, as far as our bank was concerned, we were not helping out with any purchase.

Q. Were you approached at that time–and by "that time" I mean when Crosthwait purchased WHBT from what you termed the country music owners–were you approached by Crosthwait to finance that purchase? A. No.

Q. Did you at any time lend money to Mr. Crosthwait to buy the radio station? A. No, sir.

Q. Were there any other stockholders? A. No.

Q. Does your bank have a copy of the notes you bought? A. I have an idea we still have it.

MR. BILGER: May I request, Mr. Examiner, through you, that Mr. Kenkel produce the note.

THE WITNESS: Can we furnish a photostatic copy if we have it?

PRESIDING EXAMINER: All right, surely; I don't expect the bank to furnish the original, no.

Mr. Kenkel, can we ask, then, through Mr. Burn, whether that note will be furnished? Mr. Burn, as I gathered, is willing to furnish a photostatic copy.

THE WITNESS: It has been refinanced twice. But it is not our practice to release any lien until the final payment has

[Tr. 389]

been made, so I presume that that note is still in our files.

PRESIDING EXAMINER: I see; all right. Then a photostatic copy of that note will be produced.

MR. KENKEL: Yes, if it still exists.

PRESIDING EXAMINER: If it exists; all right.

BY MR. BILGER:

Q. You said it was refinanced twice? What was refinanced twice? A. Well, the finances of WHBT were involved and had considerable current debts other than the first lien.

Q. Then your answer to my question is: WHBT was refinanced twice? A. Yes, it was.

Q. All right. This was after what period? A. I have an idea it was shortly after the purchase of the note from Mr. Crowder.

Q. When did you purchase the note? A. About 10 years ago.

Q. In 1961, wasn't it? A. That would be six years ago.

Q. It would be. A. The record will speak for itself.

Q. I am asking from your memory. You testified here, Mr. Burn, about conversations going back 13 years. This is one involving a considerable sum of money with your bank over in

[Tr. 390]

Rockwood. I am asking you if it is not a fact— A. About six years ago we set up a new note on other securities of WHBT.

Q. Is it not a fact, Mr. Burn, it was 1961 that you acquired the Folkways note running to Mr. Crowder? A. I would presume that is correct, but I don't know.

Q. You don't know? A. I think it is correct.

Q. And you are changing your testimony about "10 years ago" in that aspect? A. No.

Q. Well, was it 10 years or was it six years ago? A. About the purchase of the note?

Q. Yes. A. After I purchased the note, Folkways continued to make payments on it, but got deeper and deeper involved and eventually we refinanced the whole thing. How long it was at the time the bank bought the note until we refinanced the whole program, I don't know, but the bank's records will show, and I will be glad to get a copy.

Q. I am sure the bank records will show it, but you don't have a memory of it, is that correct? A. I am not certain as to the date, no.

Q. What was the face amount of the note? A. I don't recall.

PRESIDING EXAMINER: Between 20 and–

THE WITNESS: I think it was between 20 and 30 thousand.

PRESIDING EXAMINER: I thought it was between 20 and 25.

THE WITNESS: That was unpaid balance, and they had been paying on it three or four years.

PRESIDING EXAMINER: All right; thank you.

BY MR. BILGER:

Q. Is it not a fact, Mr. Burn, that the face value of that note was $70,000? A. $70,000?

Q. Yes. A. And it had been paid down to $23,000.

Q. I am asking you if it is not a fact it was $70,000. A. I don't recall.

Q. You don't remember? A. No, I have no reason to recall that amount. The only amount I was interested in was the unpaid balance and security.

Q. You did have some reason to recall a casual conversation you testified to, 13 years ago?

PRESIDING EXAMINER: Now, is that a question? I don't think that question can be answered by the witness. That can be made in argument. All right; that question is stricken.

MR. BILGER: I withdraw the question.

PRESIDING EXAMINER: All right.

[Tr. 392]

BY MR. BILGER:

Q. Would you say, Mr. Burn, that it was your interest in preventing the radio station from being established in Harriman, that your interest stems from the position of your bank as a lender? A. The kind of competition that Mr. Crowder anticipated giving would have been quite detrimental to any loan to any other station.

MR. BILGER: I move to strike the answer as not responsive to the question.

PRESIDING EXAMINER: Mr. Bilger, I think it is rather responsive and I think it is about as much as you can get here. What Mr. Burn has testified is that he is a creditor of WHBT, or the principals of WHBT, and you may draw the inference that he has an interest in seeing that WHBT is saved from competition so that it can pay off that note. Let's ask about the balance on that note and so forth. Then from that you may draw the appropriate argument. I think you may establish interest by the Rockwood bank, certainly.

MR. LETTERMAN: I think he just admitted, your Honor, his answer was an admission his interest was protecting their loan.

PRESIDING EXAMINER: Of course, but let's find out the details, how much is involved yet, how much of a loan is still outstanding and so forth.

MR. BILGER: Mr. Examiner, I have attempted "back in 1961"

[Tr. 393]

and this witness does not even know the face value of it.

PRESIDING EXAMINER: But he might recall what the amount now is outstanding.

Mr. Burn, do you recall?

THE WITNESS: You see, we have made a third refinancing. We refinanced it twice. Now, the first time, the time that the gentleman is talking about there, we took a note for $25,000 for the reason that that was our loan limit and the interest was set up in a separate note of approximately $6,000.

PRESIDING EXAMINER: Was that back interest?

THE WITNESS: No; that was interest that would accumulate over the term of the loan and the examiners will let us carry interest notes without creating what we call an overline.

PRESIDING EXAMINER: I see; that is, that your loan limit was not infringed upon?

THE WITNESS: That is right. So as soon as the $25,000 had been liquidated, then they started, they paid off in a short time the interest note, the second note, all in the same mortgage, of course, and then we had issued debentures concurrent with that first note, that we made directly, the first direct loan, and it was then I took a first mortgage, a new first mortgage and paid off the debentures.

PRESIDING EXAMINER: I see. Now, can you recall about how much is outstanding of that loan as of today?

THE WITNESS: I think it is $23,000.

[Tr. 394]

PRESIDING EXAMINER: $23,000. All right. Mr. Letterman.

MR. LETTERMAN: May I have a point of clarification?

PRESIDING EXAMINER: Surely.

MR. LETTERMAN: Mr. Burn, did you say that the original $25,000 that you set up in the separate account was liquidated, was paid.

THE WITNESS: Yes. We paid that, that WHBT then liquidated the first lien and it left debentures outstanding.

MR. LETTERMAN: So that the note sold to you by Mr. Crowder was eventually paid in full, and what we are talking about now is certain refinancing by the station at later dates, is that correct?

THE WITNESS: That is correct.

MR. LETTERMAN: Thank you.

PRESIDING EXAMINER: When you say "paid in full," was it paid by WHBT coming in and handing you the cash amount, or was it paid through the refinancing?

THE WITNESS: It was paid by operating earnings.

PRESIDING EXAMINER: Of the station?

THE WITNESS: During the first five years that the mortgage was outstanding.

PRESIDING EXAMINER: I see.

BY MR. BILGER:

Q. If I understand it correctly, this note you say you purchased from Mr. Crowder was purchased as a part of the

[Tr. 395]

refinancing instigated by then owners of WHBT?

MR. KENKEL: I think he mischaracterized the witness's testimony.

MR. BILGER: I withdraw it. I thought that is what he said. Now I will ask another question.

BY MR. BILGER:

Q. The note you said you purchased from Mr. Crowder was in fact, was it not, Mr. Burn, a part of the refinancing instigated by Folkways Broadcasting Company, then owned in major part by Mr. Kenneth J.–I think it is–Crosthwait?

PRESIDING EXAMINER: All right, Mr. Letterman.

MR. LETTERMAN: I don't think the question is clear in context with the testimony, because the gentleman talked about two refinancings. Now, if there were a third–

MR. BILGER: I will fix the time.

BY MR. BILGER:

Q. I show you now, Mr. Burn, Commission's duplicate docket in this proceeding, and I ask you to look at what purports to be a

Petition to Deny filed by the First National Bank and Trust Company of Rockwood over what purports to be the signature of Harry T. Burn, and an affidavit signed by one Harry T. Burn on 7 December 1962. Is that the original of your signature? A. Yes, I signed this.

Q. You signed it?

[Tr. 396]

A. Yes, and I sent the facts to the gentleman that drafted it.

Q. Now, this was, was it not, Mr. Burn, a petition to the Commission to deny WXXL's application to build a radio station? A. Yes, sir.

Q. And, subsequently, you—Well, what happened to this petition? A. This petition here?

Q. Yes. A. I presume it is still in the hearing here.

Q. The question was phrased badly. I will do it this way: Is it not a fact the Commission denied you standing to continue your protest? A. I never heard that.

MR. BILGER: I think the record will reflect it, and I will get it out.

PRESIDING EXAMINER: All right. Is there a memorandum opinion and order?

THE WITNESS: Possibly. There is one thing I would like—they keep talking about the Crowder note and the subsequent notes, and because of the perils of bankruptcy, we never consider a note paid when it is refinanced; we always hold the old papers and date our lien back to the time we first came into the picture.

[Tr. 397]

PRESIDING EXAMINER: Now may I ask this, then, Mr. Bilger: Is there a memorandum opinion and order by the Commission denying the bank's standing?

MR. BILGER: There is, yes.

PRESIDING EXAMINER: All right. I will take official notice of that, of course.

MR. BILGER: Thank you. I am sure Mr. Kenkel will agree that is what happened.

MR. KENKEL: Yes.

MR. LETTERMAN: It appears, your Honor, that 2 FCC 2d, commencing at page 320, appearing at page 328 is the order clause of the Commission.

PRESIDING EXAMINER: All right; thank you.

BY MR. BILGER:

Q. Mr. Burn, I direct your attention to the Petition to Deny, paragraph 2, to the statement that I shall now read: "When Mr. Crowder sold the notes to the bank on May 2, 1961, he did not indicate that he was planning to file for another radio station in Harriman." Is that a correct reading? A. I presume it is.

Q. Well, read it and see? A. Well, I read it, I read it as you read it.

Q. Is it correct? A. Well, yes; I wouldn't have bought the note if–

Q. I want to know if the statement is correct.

[Tr. 398]

PRESIDING EXAMINER: Now what is it?

THE WITNESS: I wanted to say I would not have bought the note if he disclosed to me he was going to file another application in a few weeks.

MR. BILGER: I move to strike that.

PRESIDING EXAMINER: All right; that is stricken. That is not responsive to the question. All right; now the question is: Is your reading correct or is that statement correct?

BY MR. BILGER:

Q. Is my reading correct?

MR. KENKEL: I am going to object. It is out of context. I think there is more there. Why don't you let the witness read it all.

MR. BILGER: Mr. Examiner, this is on cross-examination, and he may come back if he wishes.

PRESIDING EXAMINER: You are perfectly correct, Mr. Bilger. All right, the entire document, of course, can be put in because the context is important, but I think that is for you, Mr. Kenkel.

BY MR. BILGER:

Q. Now, is that the note that you purchased from Mr. Crowder that we have talked about this morning? A. I think so.

Q. You think that is the note. And at that time on May 2, 1961, is it not a fact that Mr. Crosthwait was engaged

[Tr. 399]

in refinancing WHBT? A. He could have been.

Q. Through your bank in Rockwood? A. All of these matters happened in a month or two months or three months.

Q. Well, is it not a fact, Mr. Burn, that Mr. Crosthwait approached you to inquire whether your bank in Rockwood would purchase the Crowder note then outstanding as a part of its refinancing plan? A. I would have had to have that note to have ever considered any refinancing.

Q. Did not Mr. Crosthwait approach you with that proposition? A. I don't recall that.

Q. You don't know. Is it not a fact on May 2, 1961, Mr. Crosthwait was present with you and with Mrs. Crowder when you bought the note? A. Not at the time of the negotiation with the Crowders.

Q. At the time the note was bought, is it not a fact? A. No; Mr. Crosthwait might have—Of course, I could not have bought the note and would not until Mr. Crosthwait was entirely agreeable. He was the maker and I would have had to have had his approval before I could buy it.

Q. Yes. Do you know a Mr. Floyd Hutchinson? A. Yes.

[Tr. 400]

Q. He is an attorney in Rockwood, is he not? A. Yes, in my office.

Q. And in 1961, he represented First National Bank and Trust Company of Rockwood, he represented them in 1961 in this transaction? A. Yes, he probably drew some papers.

Q. In this transaction, the purchase of the note? A. I don't know if he had anything to do with the sale of the Crowder property. I don't see why he would have. He might have drawn some papers in those same weeks or months with reference to this new mortgage.

Q. He may have, but you don't know? A. Well, we have attorneys for the bank and they are McCluen and Cooley and also Mr. Floyd Hutchinson is in my office. I still have my law office, although I don't practice, on the second floor of the bank building, and Mr. Hutchinson works in my office and we send papers to both attorneys.

Q. Then was it after May, 1961 that another refinancing occurred, refinancing of WHBT? A. There was one refinancing occurred about a year ago.

Q. That is one. Were there any others? A. You see, the first was the Crowder debt, and then when we got it and the station was heavily involved, we set up a new program and a new mortgage, new papers, but we didn't, we just held the old papers as collateral for the new, and then at the

[Tr. 401]

end of five years we made a new first lien to pay off the debentures.

Q. They had paid down the original commitment over a five-year period, is that so? A. As to the bank, yes.

Q. Pardon? A. As to the bank; the bank was paid.

Q. Yes. Then there was some additional refinancing, you said, last year? A. Yes.

Q. How much money does the licensee of WHBT owe to your bank in Rockwood? A. I would say about 23,000 and some hundred dollars.

Q. As of now? A. Yes.

Q. Now, you have another branch, don't you, over in Livingston? A. A bank?

Q. No; I am sorry. Not Livingston; a bank in Kingston? A. It is in the same county as the other and it is a branch. We have one in Harriman.

Q. I will get to that if you give me a moment, Mr. Burn. Now, you testified, I think, that you entered the banking business—about what year? A. Well, my father and I opened the Bank of Niota on

[Tr. 402]

August 11, 1916, and in 1930's, the Sweetwater Bank and Trust Company got involved and my brother and I bought that bank and spent four years rehabilitating it.

Q. Excuse me, please, Mr. Burn. I intended to ask you when you got in the banking business in Roane County. A. Well, I have been a director of the First National Bank, the former name before it became "and Trust Company" since the thirties, over a quarter of a century.

Q. That is the one in Rockwood? A. Yes. Then it was managed and largely controlled by my uncle. When he became 75 years old and married his childhood sweetheart, he asked me to come over and take over the bank, and that was November, 1950.

Q. 1950.

MR. LETTERMAN: As a point of reference on this, I would like to know your date of birth.

THE WITNESS: My birth is November 12, 1895.

BY MR. BILGER:

Q. Now, in 1950, you were then a director of a bank in Rockwood? A. And had been for 25 years.

Q. First National Bank and Trust Company of Rockwood; is that the full name? A. Maybe I can explain, because the name changed during the years. When I went to the bank, it was the First National

[Tr. 403]

Bank in Rockwood, and then we changed the name four or five years ago to First National Bank and Trust Company of Rockwood, and then about a year ago we dropped the words "of Rockwood" and we are now the First National Bank and Trust Company.

Q. What was the name of it in 1950? A. First National Bank of Rockwood.

Q. Now, what capacity did you occupy at that time in that bank? A. President, Chief Executive.

Q. You were a director? A. Yes, too.

Q. Did you have any stock? A. Yes, I had to, to be a director in a national bank.

Q. You see, I don't know. Will you tell us how much you had? A. Yes, you do.

Q. How much stock did you own in it, percentagewise? A. In those days?

Q. In 1950. A. I would say 2 percent.

MR. BILGER: All right.

PRESIDING EXAMINER: That is cumulative voting in national-bank stock?

THE WITNESS: It always has been.

PRESIDING EXAMINER: Yes, by statute.

[Tr. 404]

THE WITNESS: By statute.

BY MR. BILGER:

Q. Now— A. I bought, my family and I bought control of the bank about three years ago.

Q. Now— A. When I say "control," I mean operating control; about 40 percent of the stock.

Q. So now you have operating control of the bank's stock? A. Well, there is a trust agreement among five or six larger stockholders.

Q. And you are Chairman of the Board, I heard you say? A. Yes.

Q. And you are Trust Officer? A. Yes.

Q. Are you anything else? A. Of the bank?

Q. Yes. A. I am a director, member of the Executive Committee, Chairman of the Board and Trust Officer.

PRESIDING EXAMINER: Let us take a five-minute recess.

(Whereupon, at 11:20 a.m. a recess was taken until 11:25 a.m.)

[Tr. 405]

PRESIDING EXAMINER: Let us go back on the record.

Mr. Bilger.

BY MR. BILGER:

Q. Before your bank in Rockwood bought the Crowder note in 1961, did your bank lend any money to Mr. Crosthwait? A.

Some years before that I had purchased from him some notes on the radio station in Kentucky, I believe it was Whitesburg, those notes were made by the maker and I didn't see Mr. Crosthwait for several months.

Q. Did you have any further dealings with him other than the Whitesburg situation prior to 1961? A. I make 125 loans a day, sometimes, and I don't recall any, but I don't know whether he had any occasion to make other loans or not and there are other loan officers, too.

Q. Is Mr. Charles H. Chriss one of them? A. Charles H. Chriss was the manager of our Harriman branch and a loan officer and he could have had dealings there, I don't know anything about that.

Q. Mr. Crosthwait was a customer of your bank before 1961? A. I think so, yes, irregularly.

Q. I show you now from the Commission's WHBT license file a letter dated January 22, 1960, directed to Mr. Crosthwait and signed by Charles H. Chriss, Cashier. First National Bank and Trust Company. Do you recognize the signature? A. Yes, sir.

[Tr. 406]

Q. The letter reads, "We are hereby informing you that you have been granted a cline of credit at this bank in the amount of $5,000." A. That is correct.

Q. It is dated January 22, 1960. A. That doesn't mean that he borrowed the money.

Q. Is it not– A. That is correct, yes, we gave him a line of credit. We do that every day for people.

Q. I don't think I have asked you any questions yet. Would you wait until I do?

PRESIDING EXAMINER: That is stricken.

BY MR. BILGER:

Q. Now, Mr. Burn, I show you from the Commission's license files for WHBT what purports to be a balance sheet of Kenneth J. Crosthwait, received by the Commission on April 6, 1961, and I refer you, sir, to what is entitled "Other long term liabilities" there written is a statement, note at First National Bank in Rockwood, $4,400. Is that your bank? A. Yes, sir.

Q. Do you have any connection with the First National Bank of Harriman? A. None whatsoever, it is a competitive bank.

Q. And that balance sheet is dated what, sir? A. January 1, 1961.

[Tr. 407]

Q. Now, Mr. Burn, I show you another page from the same license file entitled "WHBT Balance Sheet, December 31, 1960." I refer you again to the long term debts. It says "Rockwood Bank, $3,960," is that your bank? A. I don't know. It doesn't say First National Bank of Rockwood.

Q. It also states, "F. L. Crowder (original note $60,000 6/1/56, $26,580.)" Is that the note you purchased in May of 1961 from Mr. Crowder? A. I would say it is.

Q. Was that purchase in connection with the acquisition by Mr. Crosthwait of 50 percent interest in WHBT? A. I had no part in that.

Q. In other words, your bank did not finance Mr. Crosthwait to buy his interest in WHBT? A. Not knowing it was security for that purpose. He could have borrowed money as an individual without discussing its use.

Q. Do you know whether he did? A. I don't know.

Q. Did Mr. Crosthwait or anyone on his behalf ask the First National Bank in Rockwood to purchase the Crowder note? A. I don't know.

Q. Now, Mr. Burn, over the years you have continued to lend money to Mr. Crosthwait, have you not?

[Tr. 408]

A. Yes.

Q. And you have gone personally into business with Mr. Crosthwait, have you not? A. I have an interest in a radio station with him.

Q. Yes, you do. That radio station is WOVE in Welch, West Virginia? A. Yes, sir.

Q. And the name of the licensee is WOVE, Inc.? A. That is correct.

Q. And in that corporation you are in fact the second largest stockholder, are you not? A. I didn't know that. I think I own about 17 percent.

Q. Are you a director? A. I don't think so. I may have been to start with but on account of self-dealing I don't think I am a director now.

Q. Are you an officer? A. No, I don't know that I ever had stock in my own name.

Q. Did you have the stock in someone else's name? A. My son may own stock in it.

Q. Does he? A. I think so.

Q. How much does he own? A. Whatever the 17 percent is.

Q. You tell me if you know. A. There is always a question of making a loan to a

[Tr. 409]

corporation that you are an officer in and I think I may have been in the corporation to start with and then never did become active for that reason.

Q. Is it your testimony that your son owns stock in it and not you? A. I think that is correct. I think the stock is in his name or at least part of it.

Q. Did you pay for it? A. Yes.

MR. LETTERMAN: Your Honor, may I ask one question?

PRESIDING EXAMINER: Surely.

MR. LETTERMAN: What is your son's name?

THE WITNESS: Harry T. Burn, Jr. Let me supplement that by saying that I think I still have the stock certificates in my possession. Whether they have ever been transferred on the books of the corporation or not, I don't know.

BY MR. BILGER:

Q. Did your bank lend any money or anyone in your three banks lend any money to WOVE, Inc.? A. I don't think so, directly to the corporation.

Q. What is your son's name? A. Harry T. Burn, Jr.

Q. Junior? A. Yes.

Q. I show you now, Mr. Burn, from the WOVE license file,

[Tr. 410]

this document, and ask you if that is your signature? A. That is correct.

Q. Would you mind reading what you have signed? A. I, Harry T. Burn, hereby certify that I am the duly elected secretary-treasurer of WOVE, Inc., and an attached copy of the by-laws of WOVE, Inc., is a true and correct copy of the by-laws as accepted by the Board of Directors at which a quorum was present and continued throughout the meeting on August 2, 1963."

This was entirely correct at the time.

Q. Thank you. A. Wait a minute. Let me finish.

PRESIDING EXAMINER: That was dated August 2, 1963. What is the situation now?

THE WITNESS: Mrs. Crosthwait is the secretary.

PRESIDING EXAMINER: You are no longer an officer, as I gather.

THE WITNESS: That is correct.

PRESIDING EXAMINER: –or a director in WOVE, Inc.?

THE WITNESS: I don't know about being a director, but I don't think so. The reason I severed my connection was that if I ever wanted to loan money to them I couldn't loan it and be a director.

PRESIDING EXAMINER: I See.

[Tr. 411]

BY MR. BILGER:

Q. I show you now, Mr. Burn, the WOVE license file, in the Section FCC Form 314 which was received August 22, 1963 in the Office of the Commission's Secretary. I direct your attention to Table 1 and I ask you if the Harry T. Burn listed at 416 West Rockwood, Tennessee is yourself. A. That is correct.

Q. You are listed, are you not, as secretary-treasurer of WOVE, Inc.? A. I was at the time of the organization.

Q. You are also listed as a director. A. Yes, I was then.

Q. You are also listed as holding 16 and 2/3 percent of the stock. A. I said 17 percent a while ago.

Q. Does that record say 16 and 2/3 percent? A. It does.

Q. If I am misstating anything, you are looking at the table, you correct me. A. The only thing, this is the story as of that date and it is not correct as of now.

Q. The officers at that time and stockholders and directors were Kenneth J. Crosthwait, president and general manager? A. That is correct, yes.

Q. He was a director at that time?

[Tr. 412]

A. Yes.

Q. He owned 68 and 1/3 of the stock, did he not? A. Yes.

Q. One of the other two stockholders was Tommy Brown? A. Yes.

Q. Who owned 7 and 1/2 percent of the stock, is that correct? A. That is correct.

Q. He was not a director? A. Right.

Q. And was not an officer—I beg your pardon—he was a director, he was not an officer. A. That is correct.

Q. The last stockholder is George Gordon Fulcher. He was not an officer, was he? A. That is correct.

Q. But he was a director? A. Right.

Q. He owned 7 and 1/2 percent of the stock? A. That is correct.

Q. Is it your testimony that since August 22, 1963, your stock picture has changed in this company? A. I still have the certificates in my box.

Q. What does that mean? Do you own the stock or don't you?

[Tr. 413]

A. Well, it depends on—I haven't delivered them. They are in my son's name and I will give them to him.

Q. Do you now own the stock as of today? A. I have possession of the certificates.

Q. No, sir. Do you own it?

PRESIDING EXAMINER: Let us get the facts. Let us ask Mr. Burn what the situation is.

MR. BILGER: I am trying to.

BY MR. BILGER:

Q. In whose name is the stock registered? A. In the books of the company it is in my name.

MR. LETTERMAN: It carries with it an equivocation. You get it in his books. He says in the books of the company it is carried in his name.

PRESIDING EXAMINER: Mr. Burn testified that he has not handed the stock certificates over or endorsed the stock certificates—I don't know if there is any testimony on that.

BY MR. BILGER:

Q. On the stock books of WOVE, Inc., the stock is listed in your name, Harry T. Burn? A. Yes, sir.

Q. You do have the stock certificates, do you not? A. Yes.

Q. Have you at any time endorsed them to anyone? A. I don't recall. I told my son I was going to give them

[Tr. 414]

to him, but I have not made delivery.

Q. Is it your testimony that since August 22, 1963, that your status as a director in WOVE, Inc., has changed? A. I don't know whether they still carry me on the minutes or not. Those books are in Welch, West Virginia.

MR. BILGER: Mr. Examiner, would you instruct the witness to restrain from the gratuitous remarks?

MR. KENKEL: I think he can give a full answer when it is called for.

PRESIDING EXAMINER: I think he can give a full answer, but I think Mr. Bilger is entitled to an answer to his question. The answer may be elaborated upon at the appropriate time.

Mr. Bilger, will you answer the question, again?

BY MR. BILGER:

Q. Is it your testimony, Mr. Burn, that since August 22, 1963 your status as a director of WOVE has changed? A. I don't think so.

Q. In other words, you believe you are still a director? A. As far as I know, yes.

Q. Has there been any change in your status as an officer of this company since August 22? A. I am not secretary-treasurer, Mrs. Crosthwait is.

Q. Mrs. Crosthwait is what? A. Secretary and treasurer.

Q. And treasurer?

[Tr. 415]

A. The secretary.

Q. Do you know whether or not you are a treasurer now? A. I don't think so. I haven't signed any checks or handled any transactions.

Q. We have a double negative.

PRESIDING EXAMINER: Mr. Burn is entitled to explain why he doesn't think so since that builds on the facts.

Mr. Burn, are you an officer of WOVE, Inc.?

THE WITNESS: ~~Now~~ now.

PRESIDING EXAMINER: On what do you base your belief that you are not now an officer of WOVE, Inc.?

THE WITNESS: Because I have seen certified minutes of meetings signed by Mrs. Crosthwait as secretary.

PRESIDING EXAMINER: How about treasurer? I understand you say you haven't signed checks for a long time, is that it?

THE WITNESS: When the minutes were held.

PRESIDING EXAMINER: This is in 1963?

THE WITNESS: I would like to have the record show that I am a decided minority stockholder, 16 and 2/3 percent. Mr. Crosthwait owns the overwhelming percent. They are 500 miles from me and they carry on the activities of the corporation. I am not in Welch, West Virginia, I am in Rockwood, Tennessee.

PRESIDING EXAMINER: For how long is it that you have not signed a check for WOVE, Inc.?

THE WITNESS: I don't think I ever signed the checks. I

[Tr. 416]

think they are always signed by Kenneth J. Crosthwait, President and General Manager.

PRESIDING EXAMINER: I see.

Mr. Bilger, is it necessary to go into these details with WOVE, Inc.? Is that going to be connected in some way with this?

MR. BILGER: Yes, sir, it shall be.

MR. LETTERMAN: I would like to request a short recess.

PRESIDING EXAMINER: All right, let us take a short recess.

(Whereupon, at 11:50 a recess was taken until 11:55 a.m.)

PRESIDING EXAMINER: Back on the record.

BY MR. BILGER:

Q. I am not sure whether I asked you this, Mr. Burn, did your bank or any of its branches lend money to WOVE, Inc.? A. I don't think so, not that I recall, not directly.

Q. Not directly? A. We might have loaned money to some of the principals.

Q. Does your memory indicate that that may be so? A. I have been inactive as a loan officer for two years.

Q. Is your answer that you don't know whether money was loaned to Mr. Crosthwait and the other stockholders to buy WOVE, Inc.? A. I think I loaned Tommy Brown, but I think he paid it back.

Q. So, you loaned how much money to Mr. Brown? A. I don't recall. Tommy Brown has about a five-figure

[Tr. 417]

savings account with us and Government bonds in his box. We let him have any amount of money he wants.

Q. Did you lend any money to Mr. Crosthwait to buy this radio station? A. I don't recall that we did.

Q. Did you lend any money to Mr. Fulcher? A. Yes, we loaned him some money, but he put up some collateral.

Q. How much money did you loan him? A. He put up some collateral other than WOVE stock and he has since sold his stock and liquidated the debt.

Q. Sold what stock? A. The WOVE stock he used as collateral with us.

Q. Mr. Fulcher sold his WOVE stock? A. Yes.

Q. When did that occur? A. Six or eight months ago. It has been since I was inactive in the bank.

Q. WOVE, Inc., banks at your bank in Rockwood, does it not? A. It does not.

Q. Have it ever deposited money down there? A. It might have had a special account for tax purposes. It does its banking in Welch, West Virginia.

Q. How far is Welch, West Virginia from Rockwood, Tennessee?

[Tr. 418]

A. Six hundred miles.

Q. How far is it from Harriman? A. About the same. Harriman is only about ten miles from Rockwood.

Q. I show you the FCC Form 413 in the application whereby Crosthwait, Inc., bought WOVE, Inc., Section 3 of that assignee's portion of the form, Question 3, and I ask you if that does not indicate the $25,000 was deposited in the First National Bank and Trust Company, Rockwood, Tennessee. A. That was the initial purchase money and operating capital which was later closed out several months later when the station was taken over by the new company.

Q. Is that your bank? A. Yes.

Q. Did your bank lend $25,000? A. These stockholders put up the $25,000.

Q. In other words, your bank loaned no part of that $25,000? A. We might have loaned some individuals their initial investment in it, but we didn't loan WOVE $25,000 and the bank has never been the operating depositor.

Q. By the individuals, you are talking about the individual stockholders of WOVE, Inc., as they are now, Crosthwait, Fulcher and Brown? A. As they were at the time the corporation was started.

[Tr. 419]

Q. I show you now a balance sheet of WOVE, Inc.,—

MR. KENKEL: Excuse me. I am going to interrupt at this point, Mr. Examiner and ask the purpose of this line of questioning. I know it is cross-examination. As Mr. Burn has told you, he has been in the banking business a number of years and I think his testimony was that at some occasion he made several hundred loans in a month and if he is trying to test his memory on every transaction that may have occurred during that time, I think it is simply wasting our time.

If he wants the facts I think he ought to check the bank records and get the information. Based on Mr. Burn's testimony, I think he wasn't an operator or officer at all those periods. He had a responsibility for those he did and as a memory test I don't think it is even a good memory test because I couldn't possibly give you an answer about anything that happened in a busy law firm two or three years ago.

If you are asked about those things you go back and look at the records and you don't make notes of them. Anything in the course of business is a thing you don't recall without checking the records. I am suggesting that we don't have cross-examination on this. If he wants the examination, give Mr. Burn an opportunity to check the records.

MR. BILGER: Do you need argument?

PRESIDING EXAMINER: Yes. If the purpose of that is to show the association that he has with Mr. Crosthwait and other of

his associates. But I don't know that it can be established by asking Mr. Burn to remember these matters.

MR. BILGER: Several points occur to me. Of course, I am trying to establish what I believe to be the interests of this witness in the Crosthwait organization.

PRESIDING EXAMINER: All right, I think that is legitimate.

MR. BILGER: By making money and joining him in business and other things which I shall get to shortly.

In addition, insofar as memory is concerned, this morning this witness testified to conversations of 13 years ago.

PRESIDING EXAMINER: Mr. Kenkel has made a statement regarding that. All these matters are matters of argument. I don't want to say because a person doesn't have an absolute memory of every transaction that might have occurred in his business career that, therefore, his memory cannot be trusted about some business conversations he had 13 years ago. Those are not areas of argument.

MR. BILGER: I wanted to point out that this witness' memory is pretty accurate.

PRESIDING EXAMINER: You can ask Mr. Burn about that, but I understand the real purpose of this examination is to establish an association with Mr. Crosthwait and his associates.

MR. BILGER: Yes, absolutely.

BY MR. BILGER:

Q. Now, has your bank extended a line of credit to Folkways

[Tr. 421]

Broadcasting Company for use in applying for an FM station? A. I thought that line of credit was at the Hamilton National Bank of Knoxville.

Q. Perhaps it was, let me see. A. I might supplement that answer by saying that it is not the policy of our bank to make loans far from home.

MR. KENKEL: I think the witness thought you were talking about WOVE.

THE WITNESS: That is right. I thought you were asking about WOVE.

BY MR. BILGER:

Q. The question was directed to Folkways Broadcasting which is the licensee of WHBT in Harriman. A. And you wanted to know if we had extended the line of credit?

Q. That is correct. A. I think you will find a statement in the file by the senior vice president who has extended the loans since I have ceased going to the bank each day who has extended a line of credit for that purpose.

Q. I show you a file of BPH-5405 which is the application by Folkways Broadcasting, Inc., for an FM station in Harriman, Tennessee. The original is signed by Kenneth J. Crosthwaite on behalf of Folkways Broadcasting Company, Inc. I direct your attention to Exhibit 2-B of that application which is entitled

[Tr. 422]

"Bank Loan Commitment Letter" and ask you if the bank which is entitled "First National Bank and Trust Company, Rockwood, Tennessee" is your bank. A. That is correct.

Q. And Russell E. Simmons, senior vice president is entitled, is that his signature? A. That is his signature and we are not repudiating it but I knew nothing about it until you showed it to me.

MR. KENKEL: Does the witness know that you are talking about WHBT? I think he is getting confused.

MR. LETTERMAN: He has been very categorically told that he is dealing with Folkways Broadcasting Company and he knows that now.

MR. KENKEL: I am saying that this is repititious because he has already said with respect to Folkways he understands there was a line of credit.

THE WITNESS: I would like to finish my answer.

PRESIDING EXAMINER: All right.

THE WITNESS: WHBT is located in Harriman, Roane County. We have a head office and two branch offices in this county and we deal with them as a customer in all relationships and that letter there is signed by the senior vice president, a man who has been with us only about two years.

For two years and three months I have not handled loans or extended credit, but it speaks for itself.

[Tr. 423]

BY MR. BILGER:

Q. Let us read it into the record, what it speaks about. A. What is the date of that letter? It is June 24, 1966.

Q. How much money is your bank agreeting to lend? A. Up to $10,000.

Q. To whom? A. Folkways. "Our loan committee is in agreement to making a loan for such purpose in an amount up to $10,000 or such lesser portion as you might require." That is signed by Russell E. Simmons, senior vice president.

Q. And the rest of that sentence is, is it not, "for use in connection with the construction and early operation of the proposed FM station." A. That is correct. They are entitled to that.

Q. Is it your testimony that you personally did not know this letter existed until today? A. I did not know it because I have not been active in the bank.

Q. You are not a member of the loan committee? A. No.

MR. LETTERMAN: Can we have the names of the members of the loan committee in the record?

THE WITNESS: We don't have one as such. The president and the senior vice president pass on those loans.

MR. LETTERMAN: You mean the statement in the letter is an

incorrect statement?

THE WITNESS: The loan committee, they are ex officio members of the loan committee, the president and the senior vice president.

MR. LETTERMAN: Who is the loan committee?

PRESIDING EXAMINER: That is what Mr. Burn just said, there is no loan committee as such, but the president and the senior vice president act as the loan committee.

THE WITNESS: That is correct. It has always been that way with us.

PRESIDING EXAMINER: And you are now chairman of the Board?

THE WITNESS: Of the Board of Directors. I meet with them once a month.

BY MR. BILGER: Mr. Burn, do you know how much money your bank now has committed to lend or has already loaned to Mr. Crosthwaite or to any of his associates in Folkways Broadcasting Company and WOVE, Inc.? A. I do not know.

Q. Could you determine that amount? A. Yes, of course I do not know of the mortgage that was taken to finance the debentures.

MR. BILGER: Mr. Examiner, through you I would like to request Mr. Kenkel to let us know that amount of money, presently loaned or committed to be loaned.

PRESIDING EXAMINER: Can he get that information through

[Tr. 425]

Mr. Burn, Mr. Kenkel?

MR. KENKEL: Yes, sir.

MR. BILGER: I should like to have it broken down to whom it is committed to, the loans.

MR. KENKEL: There may be one problem and I simply don't know whether someone else is involved in WOVE who is not involved in here, whether we can get those specific figures. In other words, I have to reserve because of the financial institution's point of view and their relation to their depositors and customers.

MR. BILGER: And I am including the corporate entities involved of which Mr. Crosthwait is the main stockholder.

MR. KENKEL: The corporate entities I have no problem with, only the ones that are not in Folkways and not the others. It may be that I can work out the problem, but I may not be able to because of the customer's relationship with the bank?.

BY MR. BILGER:

Q. Now, Mr. Burn, you testified that the Rockwood Bank had a branch office in Harriman, did you not? A. I would say that the First National Bank and Trust Company has a bank in Harriman.

Q. When was that constructed? A. Ten years ago.

Q. You are sure? A. Pretty sure.

Q. 1956 or '57?

[Tr. 426]

A. About that time. It is about ten years old.

Q. How about the one you have in Kingston, when did you build that one? A. We built it in '65, most of that year we were building it. I think it was in October of 1965 that we opened it.

Q. All right, let us fix a little geography. How far is it from Harriman to Kingston? A. Let us take it this way, the Kingston one is in the county seat and near the center of the county and in a direct line to Rockwood it is about 11 or 12 miles west of Kingston and Harriman is more north of Kingston. It is about eight miles.

Q. Eight miles from where? A. Kingston.

PRESIDING EXAMINER: And ten miles from Rockwood?

THE WITNESS: Now, the three of them make a triangle. Kingston is at one end in the center, Rockwood is at another and Harriman in another.

MR. BILGER: The Examiner had a question.

PRESIDING EXAMINER: Yes, it is ten miles from Rockwood to Harriman?

THE WITNESS: I think it is eight miles.

PRESIDING EXAMINER: I thought you had said ten miles.

THE WITNESS: Ten miles from Kingston to Harriman. They are all approximately the same travel time.

[Tr. 427]

BY MR. BILGER:

Q. Did I understand you to testify on direct examination that your bank in Rockwood of which you are Chairman of the Board now has deposits in excess of $7 million? A. Yes, sir, $7 and a half million.

Q. Seven and a half million? A. Yes, sir.

Q. And total assets? A. As of today, of $8 and one-third million.

Q. Do you remember what your deposits were for that bank in 1960? A. That is six or seven years ago—$5 to $6 million.

Q. Is not the more correct figure $4,305,443.75, or around that neighborhood? A. May I see that?

Q. In a moment.

MR. KENKEL: If he is going to give him a period of six years ago I think he is entitled to let him see it.

PRESIDING EXAMINER: Wait a minute. This is cross-examination and Mr. Bilger is entitled to proceed according to his own strategy here. Eventually, of course, he should show that document to the witness, there is no question of that, but at this moment I don't know that he has to show it.

MR. KENKEL: I am going to object if, as I understand now, he has got the witness testifying as to a 1960 deposit figure

[Tr. 428]

rounded down in cents. I don't think it is doing the record any good. I think the witness gave him a rough area figure.

MR. BILGER: I am indicating the growth of the deposits.

PRESIDING EXAMINER: I understand.

THE WITNESS: I would like to make the statement that we have had an average growth of about $400,000 for 16 years.

MR. LETTERMAN: For a 16-year period?

THE WITNESS: It has been about 16 percent a year for 15 years against the national average of four to five percent.

MR. LETTERMAN: This has been an uninterrupted growth?

THE WITNESS: No, like a sawtooth.

PRESIDING EXAMINER: You mean the national average is between four and five percent a year?

THE WITNESS: Yes, sir.

PRESIDING EXAMINER: In other words, your bank's growth is three times as fast as the national average. I see.

MR. LETTERMAN: For the 16 years?

MR. BILGER: He hasn't answered the question, but I will be happy to show him the paper.

PRESIDING EXAMINER: If you would.

MR. BILGER: I am going to show the witness what purports to be, at the close of business December 31, 1960 through 1966, the deposits and assets of the National Bank and Trust Company of Rockwood, Tennessee. I ask you, sir, if the figure listed there for the year 1960, December 31, is not in fact accurate.

[Tr. 429]

THE WITNESS: I can't dispute that, I presume it is. This is a public record over in the Comptroller's Office. We publish it.

BY MR. BILGER:

Q. In 1960, the figure was, $4,305,443.75, that is December 31, 1960, is it not? A. Yes, sir.

Q. Now, listed for the bank as of December 31, 1961, the figure is, and I corrected it, do you recognize that as being accurate? A. No, I don't. I would have to look at my records.

Q. All right, fine. A. I don't challenge the records, but I would want to look at my own.

MR. LETTERMAN: May I see the paper, Mr. Bilger?

MR. BILGER: Yes, indeed.

MR. KENKEL: May I then see it?

MR. BILGER: I had a typographical error, so I changed it.

MR. LETTERMAN: These are statements taken from official records?

MR. BILGER: Yes, Mr. Letterman, if I put on any direct evidence, one of the pieces will be that paper only with the source material on it.

PRESIDING EXAMINER: Is it important at this moment to establish the amount of deposits on December 31, 1961? Is that

[Tr. 430]

the date?

MR. BILGER: He has already done that.

PRESIDING EXAMINER: He said '60.

MR. BILGER: I have them and I shall introduce them from '60 to '66. He has said what the correct figure for '60 is, which is $4 million, not $5 or $6 million.

MR. LETTERMAN: We don't have those figures in the record and I think it is vitally important to have these figures in the record in some way or another.

MR. BILGER: I will put it in.

BY MR. BILGER:

Q. When was the conversation that you testified to that you had with Mr. Crowder regarding his philosophy, according to you, of buying and selling radio stations? A. This was about the time WRKH was opening up.

Q. Translate that into a year, please. A. About ten years ago.

Q. About ten? A. Yes.

Q. Did you have a conversation about which you testified some 13 years ago? A. That was only about him bringing a studio to Rockwood, it had nothing to do at all with his business policies.

Q. This was ten years ago? That would make it 1958. A. Yes.

[Tr. 431]

Q. Where was the conversation held? A. We had two or three along the same lines. The one I remember best was in the front lobby of the bank.

Q. I want to be completely fair and try to get a record. What I am trying to do now is trying to be as specific as possible with you. Now, is it your testimony that conversations were held in the lobby of a bank? A. Of the main office.

Q. Where is that in Rockwood? A. In Rockwood at the corner of Rockwood Street and Chamberlain Avenue.

Q. When in 1957? Can you give us the month? A. During the time that WRKH was going on the air or had a license.

Q. Can you translate that into a month for us, Mr. Burn? A. Well, the best memory I have would be April or May.

Q. April or May. Now, can you give us perhaps the day of the week that might have happened? A. No, I don't have any idea.

Q. Do you know what time of day it was? A. In the morning about 10 o'clock.

Q. Do you know that or are you guessing? A. I remember we had a conversation and the best memory I have is in the morning.

Q. Your memory is in the morning?

A. Yes.

Q. Now, who was present, sir? A. Nobody except Mr. Crowder and me.

Q. Just you and Mr. Crowder? A. That is all.

Q. No one from the bank was around? A. No.

Q. And at that conversation Mr. Crowder was supposed to have told you what, sir? A. I was telling him that I hated to see a station come into Rockwood because of my views about the economy of the town and what it could support and his comment is what I have already related.

Q. Which station were you talking about coming into Rockwood? A. WRKH.

Q. I see. Now, do you consider yourself a friend of Mr. Crowder's? A. Well, he is my customer. There is no enmity on my part.

Q. Did you consider yourself a friend of Mr. Crowder's back in 1957 when this alleged conversation took place? A. Yes, I think so.

Q. Can you tell me any reason in your judgment why Mr. Crowder would have told you that?

[Tr. 433]

A. Yes, I can certainly see it because he and I had for three or four years worked together on this studio from WHBT and my plans for a radio station or the absence of one in Rockwood had been changed radically by the license granted by the Commission and I was commiserating with him on our inability to overcome that situation or our lack of knowledge of it until it was in effect.

Q. Overcome what situation? A. Having competition coming in.

Q. You mean from WRKH? A. Yes.

PRESIDING EXAMINER: Is there anything on the record as to the exact nature of that CP or license?

MR. BILGER: No, sir. I will put it in.

BY MR. BILGER:

Q. What are the call letters of the Rockwood station? A. WRKH.

Q. It came in and it is still there, isn't it? A. Yes, it barely is there.

Q. I beg your pardon? A. It barely is there.

Q. Have you talked to Mr. Holloway recently? A. He said.

Q. I didn't ask you what he said.

MR. KENKEL: Let the record show the tone of voice used

[Tr. 434]

by counsel.

PRESIDING EXAMINER: I can't have the record show the tone of voice. Let us contain ourself at this point and let us get a question and answer from the witness.

Mr. Bilger.

BY MR. BILGER:

Q. Does your bank–

MR. KENKEL: Excuse me. Unless counsel is using documents to conduct the examination, I suggest the examination be conducted from the table.

PRESIDING EXAMINER: I think counsel is entitled to a reasonable amount of freedom. He is not browbeating the witness. Mr. Burn is a man able to take care of himself and he is not being browbeaten.

MR. KENKEL: May the record show that the witness is smiling?

PRESIDING EXAMINER: Yes, in acquiesence.

BY MR. BILGER:

Q. Does your bank or any of its branches hold a financial note by way of loans from the Rockwood station? A. We do from time to time.

Q. Do you have now? A. I don't know because I have not handled the loan portfolio for over two years. They do have a line of credit that I extended and they can come in and out when they want to.

[Tr. 435]

Q. When was the next conversation about which you testified on direct that you had with Mr. Crowder in point of time?

MR. KENKEL: I think that is being unfair unless he suggests it. The witness has been on examination for quite a while and he may not recall the sequence of testimony.

PRESIDING EXAMINER: All right. Can you suggest something Mr. Bilger, about the situation?

MR. BILGER: I don't take shorthand and this witness testified on direct that he had several conversations. The first one was ten years ago and I asked him about the next ones, I don't know when it was.

THE WITNESS: I have had conversations with Mr. Crowder, I guess, in the last ten year, twenty times. I see him occasionally.

BY MR. BILGER:

Q. You don't remember, Mr. Burn, about your direct testimony about your conversations with Mr. Crowder?

MR. KENKEL: I am going to object. He said there were a number of items on direct.

PRESIDING EXAMINER: All right. Let me say this, suggest the situation. I don't know that you can ask this of Mr. Burn in the sequence of conversations. You are not going to get anything productive.

MR. BILGER: Let me try with my notes here.

[Tr. 436]

PRESIDING EXAMINER: You may try but I am wondering what the result will be.

MR. BILGER: As I told the witness on the record, my only purpose is to try to fix the time of these conversations. As they stand they are in a vacuum and if there is something else there I want to know about it.

PRESIDING EXAMINER: Recall the situation and tell Mr. Burn.

BY MR. BILGER:

Q. You testified that you had a conversation with Mr. Crowder where he indicated he made money on the purchase and sales of radio stations and that was his philosophy of operating in the broadcast business. A. That was at the time I was commiserating with him about the situation that WRKH was coming in and he was saying that that angle was not disturbing to him because of the philosophy he operated on.

Q. Was that the conversation he held in the bank in 1957? A. Yes.

Q. It was just you and Mr. Crowder? A. Yes, but there are other times that he expressed the same philosophy.

Q. Now, I believe you testified on direct examination that there was a conversation with Mr. Crowder when he indicated by implication that he made money anyway he could in the radio business.

I believe you used the words "by implication". A. Well, I will still go back to the fact that he told me the only way you could make it.

Q. Is that the conversation of 1957? A. Yes, that was the bank conversation. Of course, like all those matters, you are dealing with people from day to day and they will express a certain theory that they work on and in other days they will supplement it. I think the entire business community down there learned of his philosophy.

PRESIDING EXAMINER: Wait a minute.

MR. BILGER: I move to strike that.

PRESIDING EXAMINER: It is stricken. There was no question along that line.

BY MR. BILGER:

Q. According to my notes you testified about a conversation that you allegedly had with Mr. Crowder when you asked him why he had gone into Roane County in the radio business. Do you remember that conversation? A. Yes.

Q. Do you remember your testimony about that conversation? A. Yes.

Q. When was that conversation? A. That was after he had filed this application for WXXL.

Q. Would you give us the year, Mr. Burn?

[Tr. 438]

A. About six years ago, five or six years ago. You see, that application was filed and was inactive for three or four years.

In other words, the reason I asked him that question was because it was entirely repugnant to what he had told me would be his policy for making an application for his stations.

MR. BILGER: I will ask to have that stricken, Mr. Examiner.

PRESIDING EXAMINER: That is stricken.

BY MR. BILGER:

Q. Was anyone else present at that time other than you? A. No.

Q. Nobody? A. Nobody.

Q. At any of the conversations about which you have testified here today that you have had with Mr. Crowder, was there anyone present other than yourself and Mr. Crowder? A. I don't recall that there ever was.

MR. BILGER: I think that is all, Mr. Examiner.

PRESIDING EXAMINER: We are now almost at adjournment time. Mr. Letterman, have you much of Mr. Burn?

MR. LETTERMAN: I have some questions.

PRESIDING EXAMINER: Will they take a long time? I was just wondering if we could excuse Mr. Burn at the end of your cross-examination if Mr. Kenkel doesn't have much on redirect. I don't know what the situation is. I don't want to keep him

[Tr. 439]

here any longer than necessary.

MR. LETTERMAN: Would it indispose Mr. Burn if he came back after lunch?

THE WITNESS: Yes, I will be back. I have a plane ticket but no particular space.

PRESIDING EXAMINER: Off the record.

(Discussion off the record.)

PRESIDING EXAMINER: Back on the record.

BY MR. LETTERMAN:

Q. Mr. Burn, just so I can be clear, will you help me a little bit with respect to this WOVE, Inc.? Do I understand that you are no longer an officer of WOVE, Inc.? A. That is correct.

Q. And you are no longer a director of WOVE, Inc.? A. I don't know.

Q. You don't know whether you are or not? A. I have not functioned as a director since we incorporated. I helped get the money to buy it and helped incorporate it and signed the charter and things of that sort. After it got on its way I have not been active at all.

Q. Did there come a time when Mrs. Crosthwait was elected to the position of secretary of the corporation? A. Yes.

Q. Do you recall when that was? A. No. The minute book will show it. That is in Welch,

[Tr. 440]

West Virginia.

Q. I understand. And you don't know who would have taken the position of treasurer of the corporation? A. No, unless Mr. Crosthwait did.

Q. But you still hold the 17 and 2/3 stock? A. I hold it in my lock box, safe deposit box, and I have talked with my son about taking it over.

Q. But you have not made a gift of it?

PRESIDING EXAMINER: That is a legal question. Of course, Mr. Burn is an attorney and well qualified to make a statement on that.

THE WITNESS: I have not done that.

BY MR. LETTERMAN:

Q. I would like to show you the ownership report filed with the Commission by WOVE. It is dated and I will hand it to you. This was filed with the Commission on July 1, 1966 under cover letter of the law firm of Miller and Schroeder, signed by John W. Kenkel. The ownership report itself, Paragraph 1, states that "All of the information furnished in Items 1 through 8 is reported as of June 8, 1966." So that this report is as of the 8th day of June, 1966.

Now, sir, I will show you that first page. This is the ownership report. It is in the official files. As part of the ownership report there is a separate page which sets forth the officers of the corporation, the directors of the corporation

[Tr. 441]

and the stockholders of the corporation if they are officers and directors, if the licensee is a corporate entity. A. Yes.

Q. Did you note here that your name, Harry T. Burn, is listed as secretary-treasurer? A. I see it.

Q. It also indicates that you are a director and that you have been a director since July of 1963, is that correct? A. That is what it shows.

Q. Is this correct or incorrect?

PRESIDING EXAMINER: The facts have been stated, Mr. Letterman.

MR. LETTERMAN: I am giving him an opportunity if he can—

PRESIDING EXAMINER: He has stated what the situation is. He hasn't functioned as either an officer or a director. He was an organizational director and an organizational officer and he never signed a check, as far as I understand, as treasurer. He has not functioned as a director beyond perhaps the meeting at the organization time so that is the situation.

I don't know that Mr. Burn can add to that. Can you add anything to that, Mr. Burn?

THE WITNESS: I was what lawyers call a "dummy director."

PRESIDING EXAMINER: I understand what the situation was and this statement was made to the Commission. Now, that is another matter, but what the actual operating facts are, are

[Tr. 442]

what Mr. Burn testified to.

Now, he does not deny that this was furnished to the Commission.

THE WITNESS: No, I can see that there.

BY MR. LETTERMAN:

Q. You didn't play any part in the submission of this document to the Commission? A. Not at all. I didn't even know it had been submitted until you showed it to me.

Q. But as it stands, it is incorrect? A. Slightly, it is incorrect as to me having any active part as an officer of the corporation.

MR. BILGER: Mr. Examiner, if I may make a comment, active or inactive, if one holds the office this is all this form requires.

THE WITNESS: Not in Tennessee.

MR. BILGER: That is all this form requires. There is no place that says, "Have you only been an organizational director" or "Are you active or inactive?"

PRESIDING EXAMINER: I understand. This is in the nature, Mr. Burn is not a party to this proceeding, so you can't say it is an admission. It is a matter that can be called to his attention as a prior contradictory statement or perhaps some other theory. He can explain what the situation is as he has explained. We are not going to get any further by going into

[Tr. 443]

this matter at any further length. The situation is on the record. I don't want to cut you off in getting productive evidence on the record.

As my old prophet used to say, Judge Medina, we have got all the meat out of the coconut, I think.

MR. LETTERMAN: I did want to present Mr. Burn with the official filing with the Commission on behalf of WOVE, Inc., in view of his prior testimony which is given here under oath. I take it that it carries with it that much import that it was given under oath in this proceeding.

PRESIDING EXAMINER: He has explained that he did not know about it. That filing was made with the Commission. He has stated the facts and that is what the situation is. Whatever inference you want to draw from it in a proposed finding as conclusions, you may.

Mr. Burn has testified to all he knows.

BY MR. LETTERMAN:

Q. Is that right? This is your full statement? A. I don't know anything else about it. In fact, I didn't know about this.

PRESIDING EXAMINER: Let us adjourn then, if you are finished at this particular point, Mr. Letterman, until 2:10 this afternoon.

(Whereupon, at 12:40 p.m., the hearing adjourned, to reconvene at 2:10 p.m., the same day.)

[Tr. 444]

AFTERNOON SESSION

2:10 p.m.

PRESIDING EXAMINER: May we go on the record, gentlemen.

Whereupon,

HARRY THOMAS BURN

the witness on the stand at time of recess, resumed the stand and testified further as follows:

PRESIDING EXAMINER: Mr. Burn has resumed the stand. Mr. Bilger.

MR. BILGER: Over the recess, I remembered one question I forgot to ask.

PRESIDING EXAMINER: All right, Mr. Bilger.

MR. BILGER: If Mr. Letterman will yield.

MR. LETTERMAN: Yes.

CROSS-EXAMINATION (resumed)

BY MR. BILGER:

Q. Mr. Burn, I show you copy of the Folkways Broadcasting Company FM application in the Commission files and show you a letter dated December 31, 1966, and ask you if that is a commitment from the First National Bank and Trust Company in Rockwood to extend a line of credit to Folkways Broadcasting Company of up to $15,000 to build this FM station. A. It is.

MR. BILGER: Thank you, Mr. Examiner.

THE WITNESS: It is a commitment signed by

[Tr. 445]

Russell D. Simmons, Senior Vice President, since I have retired and about which I had not been informed.

PRESIDING EXAMINER: All right, Mr. Letterman.

BY MR. LETTERMAN:

Q. Mr. Burn, I would like to have you help me a little bit. Some of the places and dates are not in my mind clear, and I would like to try to clear as much of that part of the testimony up as I can.

First, I would like to ask you about the studios that were constructed, I believe, in Rockwood? A. Rockwood.

Q. Rockwood, Tennessee, in the bank building on the third floor? A. Yes.

Q. In that connection, I believe you testified that the bank spent between three and four thousand dollars in remodeling; is that correct? A. To the best of my memory at this time.

Q. Yes, sir, and that is all I am asking you.

Now, you said that there was an agreement entered into for the lease of those premises? A. There was.

Q. Between the bank and W— A. WHBT.

Q. WHBT.

[Tr. 446]

A. I think at the time they were operating the Harriman Broadcasting Company.

Q. Can you place this in time for us? Was this in 19— What year? 1950 or '54? A. They vacated the offices about the time or a month or six weeks, well, a few weeks after WRKH started operating and leased—Well, I would rather go back to the original contract on that. We can probably find it.

Q. Well, sir, do you remember the term of the lease was five years? A. I think it was five years, but I don't know why I think it. I have to look at the record on it.

Q. Did you have offices in the bank building? A. My personal office?

Q. Yes. A. I have law offices and still have law offices on the second floor.

Q. You had occasion to go to the bank building on frequent occasions? A. I was there all the time.

Q. I see. Now, the studios were there for a fairly long period of time or short period? A. Several months, let's put it that way, month to month. From the time we got them ready to be occupied until they were vacated subsequent to the time that WRKH operated.

[Tr. 447]

Q. That was a period of months or years? A. Years.

Q. So the bank had an opportunity to recapture its capital investment? A. I think it probably did. That is what we were trying to do.

Q. To the best you can recall, the studios were abandoned or given up about the time that WRKH started the programming? A. Yes, I thought too soon after.

Q. There is no local studios in Rockwood at this time, is there? A. No; the only local studios are those of WRKH about a block away.

Q. I would like next to turn to the conversation between yourself and Mr. Crowder—that is, the first conversation—and I believe you mentioned it took place approximately 10 years ago. A. Yes.

Q. And you also said, according to my notes, that it was this conversation, this conversation took place about the time it became known that he—and, I take it, it is Mr. Crowder—was selling WHBT and his station in Sweetwater; is that correct? A. That is correct.

Q. Now— A. Those matters all took place within a period, as I

[Tr. 448]

remember, of two or three months or three or four months in the spring 10 years ago.

Q. The sale of WHBT and sale of Sweetwater station were events that had preceded the conversation you had on this particular occasion? A. That is the way I remember it, yes.

Q. Let me go back. Prior testimony indicates that the sale of WDEH at Sweetwater, Tennessee, was consummated September 5,

1956. To put it further in context, in 1956 F. L. Crowder—I believe this is correct—together with Folkways Broadcasting Company, filed application for assignment of license with respect to WHBT and that was on June 13, 1956, and that deal was consummated July 1, 1956.

Now, are we saying that the conversation would have taken place sometime subsequent to, let us say, July of 1956? A. I think it was in the spring of '57.

Q. In the spring of '57? A. Yes.

Q. Now, I understand you were standing in the lobby of the bank building? A. That is right.

Q. How did the conversation open up; was it you told him you regretted very much seeing another station coming into Rockwood? A. Yes. It was going to vitally affect him because he

[Tr. 449]

still had a $30,000 mortgage on WHBT and he was still involved very deeply.

Q. Now I have WRKH, the application for construction permit; the Commission records indicate July 3, 1956, and your construction permit was granted February 6, 1957, and they went on program tests May 9, 1957, which would be, I take it, the spring? A. Yes.

Q. Of 1957? A. Yes.

Q. Then eventually licensed on June 12, '57? A. I don't think I ever knew about the application. The information that came to me would be after the building permit or something was done that would come into the press there to let us know the other station was coming.

Q. That would have been May or June of '57? A. Yes.

Q. Does that date fit with your recollection?

MR. KENKEL: Excuse me. The grant was February, '57?

MR. LETTERMAN: No; I say they went on program tests authority in May, 1957.

MR. KENKEL: The witness may not understand "program test." It means they were built and started off—

THE WITNESS: I was saying, to the best of my recollection this conversation took place in February or March of '57.

[Tr. 450]

BY MR. LETTERMAN:

Q. So it was not necessarily related to WRKH going on the air? A. It was related to the fact it was going to.

Q. Now, as I understand, then, in response, the remark you made or did you make this remark, you regretted very much seeing the other station coming into Rockwood? A. Yes, I regretted it at the time. I still regret it.

Q. Well, I am not, you know, I am just asking if this is how the conversation opened up. A. Yes.

Q. Following that, Mr. Crowder said something, words to this effect; that he had learned the hard way; is that correct? A. Yes, those are the words I used, and I think those are the words he used.

Q. Then something to the effect that you could not make money by operation of the station; the only way you could make money is by building them up and selling them; is this correct? A. Getting a franchise, in my own words, in virgin territory or a county that didn't have a station, and building a volume of income and selling them based on a going concern with a volume of income.

Q. Sir, was this a philosophy that Mr. Crowder related to you at that point in time for the first time or had this type of conversation occurred prior to, let us say, the spring

[Tr. 451]

of 1957? A. I remember this particular conversation. I had several conversations with him. I am under oath. I don't want to suppose. I think I had three or four conversations with him along this line, but I don't—that was just general conversation from time to time.

Q. But this was a specific conversation you are relating now? A. Yes, that I am being specific about. It was in conjunction with other conversation.

Q. The term you utilized, "virgin territory," I want to ask, was it a term he used or a term you used? A. I am using it now. He probably said, "in communities that had no station that he thought were large enough to support one."

Q. But what you are giving is not a present recollection of what the conversation was verbatim, but it is just how you are reconstructing it, is that right? A. It is how I understood it.

Q. Now, sir, there came a time when you purchased the WHBT note from Mr. Crowder, is this correct? A. That is correct.

Q. In that point of time, there was unpaid balance of approximately $23,000? A. Between 20 and 25 thousand dollars.

[Tr. 452]

Q. As I understand it, and I want to be clear on it and I ask you again, was this particular note paid in full at any one time on WHBT? A. It was refinanced with a new note.

Q. That is what I don't understand. At one time I thought your testimony was that this note was paid out and then— A. No; it was the one that, the one that we took we held as a lien. We still have it, the original lien, but we took another note on the basis of $500 per month and that note was paid at the rate agreed upon, and when it was paid off, the debentures and took a third, a first mortgage for the third time.

Q. Let me put this to you this way; let me ask you this question: As far as the original obligation is concerned, that is the $70,000 note that was given to Mr. Crowder by WHBT, that note at one time or another had been fully paid? A. It was refinanced.

Q. And as refinanced, it was paid out?

PRESIDING EXAMINER: Wait; Mr. Burn testified this morning it is the policy of the bank never to give up the original obligation but to keep it in its possession because of the lien that it represents; is that right, Mr. Burn?

THE WITNESS: Yes. We never surrender; we don't release any when we refinance a mortgage or anything, we hold the original papers and don't go to the courthouse to release the

[Tr. 453]

lien, because the renewal doesn't pay.

BY MR. LETTERMAN:

Q. Well, I still want my question answered. It is not that complicated. All I am asking, you paid Mr. Crowder some 20 to 23 thousand dollars? A. A lump sum.

Q. In a lump sum for his equity position in the note at that time? A. That is correct.

Q. The bank purchased the note? A. Yes.

Q. The obligation ran to the bank? A. Yes.

Q. From that point forward, that was back in 19 what– 1956? A. About 10 years ago.

Q. 1956 to 1957? A. Yes, sir.

MR. KENKEL: He testified 1961 for the purchase.

THE WITNESS: '61 was the purchase, yes, five or six years ago.

BY MR. LETTERMAN:

Q. '61 was the purchase of this particular note? A. Yes.

Q. Now has the money that you paid to Mr. Crowder, in

[Tr. 454]

effect, the 20 to 23 thousand dollars, has that sum of money been paid into the bank together with the appropriate interest on the note as it was renewed? A. The renewal note was liquidated as agreed.

Q. So that the bank didn't stand, or the bank lost nothing out of the transaction it had with Mr. Crowder in purchasing his note, is that correct? A. Well, if our present existing loan is settled, we won't.

PRESIDING EXAMINER: Now, there has been refinancing, Mr. Letterman.

THE WITNESS: Refinanced twice.

PRESIDING EXAMINER: Refinanced twice. That is the situation. Now, the bank had not been made whole regarding this $23,000 as such.

THE WITNESS: Yes, there is $23,000 owing now. It is part of the debt of WRKH that existed at the time we dealt with Mr. Crowder.

MR. KENKEL: Excuse me. For the record, is that—

BY MR. LETTERMAN:

Q. WHBT? A. Yes, WHBT. It is part of the debt. It has made progress in liquidating, but it never cleared up the debt they asked us to work out.

Q. When you say the note, when it was renewed the first

[Tr. 455]

time, it was then liquidated, that amount of money was paid out, what do you mean by that? A. Paid out?

Q. Paid in. A. I was paid in credit on the existing note, but the mortgage had been with the first and second lien, and so when the first lien was paid out, that note liquidated, we immediately took a third first mortgage and settled with the people that had debentures in the first financial reorganization. I hope I got that clear.

Q. I am sorry; I am thick; I just wanted to be sure I understood. A. Do you understand now?

Q. No.

PRESIDING EXAMINER: The point was, Mr. Letterman, as I understand, the bank refinanced the operation, at one time they issued debentures and they were sold to various members of the public. Now, there was another refinancing and the money that was represented by that refinancing was paid over to the debenture holders, the debentures were then considered satisfied, but there was a continuing operation by the debtor, which was Mr. Crosthwait.

THE WITNESS: And that has continued from the original refinancing.

PRESIDING EXAMINER: That is right.

[Tr. 456]

BY MR. LETTERMAN:

Q. That is the point I want to straighten out, the original debt, the $23,000 had never been amortized at all, no payments on principal had been made on that note by WHBT during this period of time? A. The debt of WHBT, when we came into the picture, was, say, $60,000 or $65,000.

Q. Yes, but at the time— A. Let me finish, if you will—

Q. Yes. A. And the bank legal limit was 25, so we go ahead and take, or just ignore the note we had, we didn't waive the lien or go to the courthouse and release it, but just set it over to the side because it had not been paid; then we, or I did, as an individual, and the bank, of course, took the legal limit of that existing debt of WHBT in the form of a first mortgage and in the form of certain stockholders and directors who took the debentures.

I think—I am not sure—I think it is all in one instrument, but it could be in two. Anyway the debentures were second liens and not legal investments for the bank.

As soon as WHBT, at the rate of $500 per month, had paid out the $25,000 legal limit of the bank and also five or six thousand dollars interest note, which was held over, well, held over because we did not collect interest concurrently, we got

[Tr. 457]

the interest note paid after the $25,000 was paid. I already testified as to why that was done.

Then we were in the middle of the refinancing, so then the bank takes another note for, I mean a mortgage, and I think it was $25,000, maybe $26,000, and part of the debenture holders took preferred stock. The bank put up enough cash to pay off those who had that second lien and we did it by taking a first lien, because the original first lien had been liquidated. I hope I make that clear. That is the only way I can explain it.

Q. Well, I am confused. I just want to ask a few more questions and then drop it. All right, at the time this, I believe the, at the bank 10 years ago, you say in '57, when Mr. Crowder came into your office in the bank, and this was, I mean 1961, I am sorry, before you knew that he had applied for another facility which eventually became WXXL, at Harriman, before you knew that, I understood about the time just prior to the time you had knowledge of it, he came to your offices in the bank and at that point in time he was the payee on a note from WHBT which was part of the original sale of the station and Mr. Crowder was somewhere between 20 to 23 thousand dollars on that note and he sold it to the bank and the bank purchased it and he received 20 or 23 thousand dollars. Now— A. The record will show exactly the amount.

Q. Whatever it was, around 20 and 23 thousand—

[Tr. 458]

A. I say 20 to 25 thousand dollars. I don't want to be bound by exact figures.

Q. That was the total amount due on this which was probably an installment of some kind, total amount due on the installment note at that time? A. Remaining unpaid portion of the original first mortgage lien note of the Harriman Broadcasting Company.

Q. Now, following this, as I understand, WHBT began to make payments to the bank in lieu of to Mr. Crowder because Mr. Crowder sold the note to the bank; is that right? A. Yes. I don't know how many payments WHBT made on that particular note. We may have put in that refunding pretty soon.

Q. Well, then, as far as–Let me go to the ultimate. A. Let me supplement that by saying the bank couldn't come into the picture at all in helping WHBT as long as there was a first lien outstanding, because the Federal statutes would not permit it. But when we got that in our possession with the owners, then we could deal.

Q. Sir, when you purchased the note, $23,000 or 20 to 25 thousand dollars, didn't the security follow the debt? A. The mortgage, the chattel mortgage and the deed of trust?

Q. Yes. A. Certainly it did. We had it.

[Tr. 459]

Q. You had it? A. Yes.

Q. The first mortgage? A. Yes, the first lien.

Q. So you were able to purchase this particular note and pay Mr. Crowder off and he was out of the picture? A. Yes.

Q. Then the obligation ran between WHBT and the bank? A. That is right.

Q. And that was the first, the security you had for that note was the first mortgage? A. Yes, sir.

Q. Now, this is what I am trying to know, ultimately that I want to know, is whether the amount of money you paid Mr. Crowder was paid to the bank so that actually you were made whole insofar as the Crowder transaction was concerned. You say there were three financings. Did you lend WHBT more money? Is that the point, or is it the same $23,000? A. It is the same money.

Q. Then I am still kind of confused. Has that 20 to 25 thousand dollars—has the bank ever been paid that amount of money on that note? Has that note ever been paid out? A. The Crowder note?

Q. Yes. A. The subsequent note was liquidated in monthly

[Tr. 460]

installments, but we have never released any lien, because we have never been fully paid for our advances. What we were doing, we were doing what was legal and getting that much and then taking another step of what was legal and getting that much, and we are now on the third step and we have not been paid that.

PRESIDING EXAMINER: The total amount of money you have advanced to Crosthwait and his associates is how much, Mr. Burn?

THE WITNESS: Between 50 and 60 thousand dollars.

PRESIDING EXAMINER: I see; that is the reason, of course, you have not been paid completely?

THE WITNESS: Right.

[Tr. 461]

BY MR. LETTERMAN:

Q. The refinancing involved further disbursements to WHBT? A. On other debts, yes.

Q. On other debts, but I am talking about, in other words, when there was refinancing, you are talking about further disbursements to the station, you did make additional loans to the station, to Mr. Crosthwait? A. Of course now, to keep the record absolutely, technically, accurate on that, it is entirely possible he would come in for 1,000, 2,000 or 3,000 temporary loans all along and pay those off, but they have nothing to do with the basic financing.

Q. In any event, on this particular occasion or about the time when Mr.—or subsequent to the time when this note was sold to you by Mr. Crowder, you had another conversation with him, did you not?

You had a further conversation, and let me be specific, in which the subsequent came up as to why did he come back in this particular market, Harriman, when there was already a station in Harriman? I believe you said this conversation came up, it was at that point in time he gave you his reasons as to why he filed an application for a new broadcast station to operate at Harriman? A. You see, he already explained to me he went into virgin territory or an uncompetitive community or communities

[Tr. 462]

and when I bought the note I never dreamed in 8 or 10 weeks he would have an application to file for a station to compete with the station on which he had given me a lien. It is true he and his wife sold the note without recourse. I was wondering why at the time, but I was willing to take it because I thought the station was security.

But, of course, you see what happened and the record will show, but I think it was 8 or 10 weeks and he must have had it in mind and had the engineering underway at the time he sold the note to me.

MR. BILGER: I object.

PRESIDING EXAMINER: That is stricken, that he must have had it in mind.

THE WITNESS: I guess I, as a lawyer, ought to know I ought not to answer that way.

MR. KENKEL: I think the witness is testifying about what motivated him to talk to Crowder.

PRESIDING EXAMINER: No, I understand, he has already testified, Mr. Kenkel, and Mr. Burn recognizes it.

BY MR. LETTERMAN:

Q. I am talking about a second conversation, the second conversaion, there may be more, but I am talking about the second conversation that must have taken place sometime in 1961 prior to the time you had knowledge that Mr. Crowder had filed an application for a new standard broadcast station to operate at

Harriman. It was this conversation that certain statements were made.

What I am trying to get straight is what the statements were? A. Those were made after he filed the application and he was explaining to me why he did it.

Q. How did this come about? First of all, tell us where this conversation took place? A. I don't remember.

Q. And– A. I think it was somewhere in Harriman, but I am not sure. I do know, though, he explained to me why he did it. I already put in the record here his reasons for it.

Q. Well, you used the phrase "the policies of management that were being pursued by WHBT were bound to bring doom." Now, were these his words? A. No, they are mine. But he did say it probably in these words–

Q. No, no. A. I was going to try to rephrase his words.

Q. No, I am trying to ask you, in other words, you don't have any present recollection of the exact words he used at the time? A. Approximately.

Q. Just approximately, but not verbatim?

[Tr. 464]

A. Well–

PRESIDING EXAMINER: Nobody can remember verbatim, Mr. Letterman. I think if you want to get the conversation you should Mr. Burn to tell us what he does remember, if you are interested–

MR. LETTERMAN: I was interested in trying to establish what he is testifying to is not a present recollection of the exact conversation and he is not really paraphrasing but giving us what he considered to be the substance of the conversation.

PRESIDING EXAMINER: Now, Mr. Burn, as I gathered is not reconstructing but he is now giving us his recollection of what the conversation was as far as he can recall, by definition.

Can you tell us, Mr. Burn, what your recollection is of that conversation Mr. Letterman is asking about?

THE WITNESS: I made an inquiry of Mr. Crowder as to his motive or his reason for filing this application because I had the lien, first lien, and I thought it was very adverse, and he said to me that the station was being operated with expenditures that was not justified in a town the size of Harriman and that they had changed the location from the middle of the dial to the far right, making it more unpopular from the standpoint of putting it up locally and that, for one example of the type of operation that was being conducted, there they were formerly, when he operated the station, they formerly had a tube that cost so many dollars and when they changed to the

[Tr. 465]

5,000 watt they had to use a tube that cost, as I recall it, three or four times as much and because of that, the tubes wore out either by time or by acts of nature, lightning, I think he may have mentioned, and that they were going to have to face the cost of replacing with high priced tubes the same type of appliance that he had used that would cost just a fraction of the amount.

That was an example of the way the station was being operated and it was, the whole operation was such that he just couldn't survive.

BY MR. LETTERMAN:

Q. Sir, were you aware that Mr. Crowder at one time had an interest in a station WLIV at Livingston? A. I knew he came in there. I think that was after these other deals.

Q. I see. A. I am not sure. I knew he had an interest over there. In fact I thought it was his station.

Q. Well, I believe you testified that you entered the banking business in 1911 with your father? A. Yes. I set up the books and I was about 16 years old that my father founded it and at his death the uncle took over presidency and when I became 21 I became president and stayed there with it three or four years and left town and went to Sweetwater and that is where I was connected with the Sweetwater Bank and Trust Company.

[Tr. 466]

Q. I see. The bank that your father and yourself opened, did you state once where it was? A. Niota.

Q. With respect to loans made by the bank, the bank at Harriman and specifically in connection with the $15,000–I am talking about the bank in Harriman specifically with reference to a question asked by Mr. Bilger in connection with a $15,000 loan or line of credit for purposes of construction of an FM facility, Folkways Broadcasting Company.

Now, I will ask you, you say you are chairman of the Board? A. Yes.

Q. Are you active as a director, in other words, do you attend the director's meetings which I thought you said occur once a month? A. I preside, but the Board of Directors don't pass on the notes.

Q. No, sir, my question is not that hard. I just wanted to know whether or not you participated in the meetings of the Board of Directors which I understood once a month? A. That is correct, I do. I preside and they meet tomorrow and I won't be there.

Q. I would like to ask you this question: As a matter of business practice, is it a custom or practice, as it is in some other banks, where a loan is of this magnitude, $15,000, for the Board of Directors to ratify the actions of a loan

[Tr. 467]

committee in making a commitment of this nature, that is, within $15,000 or let's say $10,000? A. Our Board of Directors approaches every loan in each one of the offices by number to number.

Q. Now, I don't think I follow that, by number to number? A. Yes, the loan number might be 120,000 on one Board meeting and the next meeting the loan number is 122,501, then the Board of Directors gets a report from the management as to the loans that have been consummated in the preceding calendar month and it goes from loan number so and so to so and so. It is number to number, at all three offices, and the Board ratifies and approves. It is only the full amount. They do not review the loans.

Q. Even loans of this nature—let me ask you, won't this be a significant loan, a loan of $15,000, won't this be a loan that would come to the Board's attention above, say, loans for cars? Wait a minute. For personal loans, say, five or six hundred dollars, isn't this the type of loan called to the Board of Directors' attention or is it not? A. Some loans, if the management thinks that a loan might become a problem loan, or the quality might not be as high as we ordinary require, then they prefer and obtain an approval of the entire Board before it is granted.

Q. I take it this particular loan that we have reference to was not one of that nature?

[Tr. 468]

A. I am not going to say about that. I could go to the minutes and see. Sometimes we go three or four months without any particular loan being discussed and then maybe the next month we will have one or two.

Q. You have no present recollection of having discussed or considered this particular loan? A. I tell you what I did with it. I called the National Bank Examiners, the chief who would pass on those things, and told him what I proposed to do. He said, "We don't think too much of radio station loans, but if your management is willing, because of the local situation, to make the loan, we are not going to say anything about it."

The bank examiners never did criticize it.

Q. I see, you gave it your personal attention?

MR. KENKEL: Excuse me, I think really for the purposes of the record you are talking about a consummated loan and I believe the witness is answering you in those terms. Someplace along the line you lost the witness if you are talking about a line of credit.

BY MR. LETTERMAN:

Q. I am saying about the thing I was talking about from the very beginning. A. Well, at sometime, I don't know what and who it was, but at sometime, I either called the Chief National Bank Examiner or Mr. Smith called him and explained to him the

[Tr. 469]

situation.

Mr. Examiner, if I may interpolate here, for the record, from May, 1964, to May, 1965, I was head of a national organization with headquarters in Washington and I traveled into 43 states, 43,000 miles, and was still president and chief executive officer, but they gave me a sabattical year and for those, about 10 months out of the 12, you know more about daily operation of the bank than I do since I retired.

In fairness to me, I would like the record to show that because it has been about three years since I actively participated in the operation of a bank.

BY MR. LETTERMAN:

Q. Mr. Burn, it was against your better judgment that this station was established in Rockwood, was it not? A. Yes. I still think that judgment is correct.

Q. I believe you said actually you hated to see the station coming into Rockwood at that time? A. Well, I don't know whether that phraseology that is appropriate. I would like to have had a station in Rockwood from a civic standpoint, but I never did see how he could survive as a matter of economy of the town and county.

Q. When was this, that was back in 19–what, when he came in? A. It was–

Q. That was back in 1956, right? It has been in operation

[Tr. 470]

ever since, hasn't it? A. At a terrible cost in health of the people that operate it.

Q. But it is still operating? A. Yes, it is still on the air.

PRESIDING EXAMINER: Well, Mr. Burn, you said that you felt that Mr. Crowder had given up his Rockwood studio too quickly?

THE WITNESS: Well, I don't know he was operating it. I think he had already sold.

PRESIDING EXAMINER: I see, but the Rockwood studio had been given up?

THE WITNESS: I would have liked him to have kept it and try not to compete, but the minute WRKH came in they threw up their hands and moved out.

BY MR. LETTERMAN:

Q. Did this affect your lease arrangements? A. No, they finished paying, somebody paid.

Q. This is a specific type of question: At one point in time apparently Mr. Crowder conveyed to you the idea that the way to make money in broadcasting is to acquire a license, construct a station, construct it, build it up, make it appear profitable, and then sell it? A. That is correct.

Q. Now, can you tell us on any specific occasion that you have direct knowledge of how he implemented this policy? Do you

[Tr. 471]

have any direct knowledge of how this philosophy was implemented if it ever was? A. Only by his acts. What he sold, he sold WHBT. He sold WDEH and he went into Livingston with a new station which I think—

Q. Didn't he go into Livingston prior to the time he sold those two stations? A. I don't know. I don't think so.

Q. But if he had gone into Livingston, wouldn't that in some way be contrary to the view you are expressing? A. No, it supports the theory if he is going into a new territory and building it up suddenly that is what he had.

Q. In Livingston? A. Yes, I think so. I didn't participate in any of those matters, but I am talking from what is common knowledge there. I was not the banker for the Livingston station. I didn't live in Livingston. Livingston is about 75 miles or 100 miles from Harriman and Rockwood.

Q. I believe you said that one about, let us say, from 10 to 20 separate occasions you had conversations of this nature with Mr. Crowder? A. I said I had conversations with him all along for this period of years. I would say that, to the best of my knowledge, the discussions on how to make money on radio stations were maybe two or three or four times. I am not allowed

[Tr. 472]

to testify to common knowledge, I don't think.

Q. I just wanted to clear that, that in not one of these conversations in which this type of philosophy was made to you or conveyed to you was anyone else present? A. No, I don't think so. If there was, I don't recall. Some of the conversations may have taken place at social gatherings or when others were standing around, but I have no memory of who might have been present.

MR. LETTERMAN: Thank you very much. I have nothing further.

PRESIDING EXAMINER: Mr. Kenkel.

REDIRECT EXAMINATION

BY MR. KENKEL:

Q. Just a few questions, Mr. Burn.

In response to some questions by Mr. Letterman and earlier Mr. Bilger, Station WRKH in Rockwood, your bank, and when I say your bank, I mean First National Bank and Trust Company there, has your bank been the banker for WRKH? A. Yes.

Q. And in what connection have you had occasion to learn of the financial situation of the bank, of the station rather? A. Yes. The owner and operator, Mr. Dick Holloway, has been to me three or four or five times wanting me to try to help him out.

MR. BILGER: Mr. Examiner, I object to that answer.

[Tr. 473]

It is hearsay obviously.

PRESIDING EXAMINER: No, wait. There is nothing hearsay about it when the man testifies–this is hearsay probably under exception to the hearsay rule–when he testifies to his state of mind, I don't know what the situation is.

Are you now offering this for the state of the bank, the state of the bank or the state of the personnel of the bank? I know that

Mr. Burn previously testified about the terrible cost in health to these people. That is one situation. Now if we are talking about the situation of the Rockwood station, that is another one.

Mr. Bilger would be perfectly correct in objecting in the way the question was phrased. I took it to mean something else. But I will sustain the objection as it is currently phrased. You may re-ask the question, Mr. Kenkel.

BY MR. KENKEL:

Q. What has been—well, you testified in response to a question or questions on cross-examination about the owner of WRKH, how he appeared to you. How did he appear to you and what do you, of your own knowledge, know about him?

MR. BILGER: Are we talking about health, his physical appearance?

MR. KENKEL: Yes, that was the matter brought out on cross.

MR. BILGER: I object to the question. I don't see its materiality.

[Tr. 474]

PRESIDING EXAMINER: I don't know the materiality either, but what is your feeling, Mr. Kenkel? Why are you asking it?

MR. KENKEL: Mr. Examiner, there were a number of questions here during cross-examination designed to test the witness's understanding of the problems of broadcasting, financial, and the basis of some of his other statements. These probed the question of his knowledge of the Rockwood situation, WRKH. I am simply following up or going through the door that was opened by cross-examination.

PRESIDING EXAMINER: Yes. Mr. Letterman. Were you going to say something?

MR. LETTERMAN: No.

PRESIDING EXAMINER: I think we have to sustain the objection on that, Mr. Kenkel. We are going too far afield and into matters that are not really to be probed.

BY MR. KENKEL:

Q. Mr. Burn, did you during the luncheon recess, have occasioned to review, in my office, the file copies, some file copies of WOVE, Welch, West Virginia? A. Yes.

Q. On the basis of your review, did you refresh your recollection of the situation? A. I did.

Q. In cross-examination you testified as I recall that you saw some resolutions or stockholder's minutes signed by

[Tr. 475]

Betsy Crosthwait, the secretary, and you answered in terms of Station WOVE, and was that testimony correct? A. I was confused about that. It was WHBT.

Q. So the record that you have reference to that you saw Betsy Crosthwait, a secretary, was– A. Was WHBT.

Q. Was WHBT. All right.

In the material Mr. Bilger showed you this morning, the earlier petition, he read to you the statement about purchasing the Crowder note and following the statement from the petition that he read to you, there is this statement and will you agree if it is so, "Had he done so, the bank would not have purchased from him the above referenced note at that time and for the consideration it did pay because of the questions which would have prevented themselves; namely, the question of Mr. Crowder competing with an existing station on which he retained a lien and the question of the value of the note and security. (land and personal property of Station WHBT) with a second station in Harriman."

Was that the statement? A. That would have been true regardless of the refinancing, I would not have come into the picture at all with a threat of another station going in.

Q. Mr. Burn, there has been testimony that you, that you, and again I am using "you" in the sense of the bank, have

advanced money or made loan commitments to various businesses in which Mr. Kenneth Crosthwait is connected and that is true? A. Yes, that is true.

Q. Now, sitting on the witness stand there today, do you know of your own knowledge the details and the amount of all of these transactions or is this something you would have to go to the bank records to get the details? A. The only way I could get it, that it can be brought down into detail or accurately set out would be through the bank's records, because when we one time establish a credit for a man or he comes in and deals with any officers that makes loans, he would be in and out and I wouldn't know.

Q. There was a time, I understand, that albeit, you were, what was it, the president and were away from the bank and from the community for an extended period of time? A. Yes, about ten months.

PRESIDING EXAMINER: For about ten months?

THE WITNESS: Ten months, yes. May, '64 to April '65.

PRESIDING EXAMINER: All right, thank you.

THE WITNESS: I did become chairman of the Board in January, 1965.

BY MR. KENKEL:

Q. Mr. Burn, you testified to an average growth in the bank deposit figure, you testified to a growth and gave us the figure of the growth and to what do you attribute it or to

what factors, if any, do you attribute it? A. My uncle who operated the bank ahead of me, is 75 years old, and was very tired and he made loans to a friend if he wanted to and the bank business, the possibilities for the bank were not developed and I just, you might say, took an open field there. That is the reason the growth has been so phenomenal compared to the national average.

PRESIDING EXAMINER: You don't attribute to economy of the region but to personal efforts on your part, is that it?

THE WITNESS: The economy has advanced to some extent, but we had a "furnace" that was started after the Civil War and was bought by a competitor in Birmingham and closed, but we have since gotten a new steel mill that employs about the same number. Also we had a textile mill to go in between Rockwood and Kingston which employs four or five hundred people.

All through the years we have had, we have been somewhat of a bedroom for Oak Ridge, Tennessee, and we have 70 or 100 people that work in Oak Ridge at good wages, but taking the Rockwood proper and Rockwood census districts, I would say that the increase in employment in the last 15 years has not been over five or six hundred.

PRESIDING EXAMINER: Thank you, sir.

BY MR. KENKEL:

Q. The size of the bank deposits, both absolutely and relatively, that is—

[Tr. 478]

A. State the question again.

Q. The size of the bank deposits, both absolutely and relatively, viewing them— A. Size?

Q. Size year from year. As a banker with the experience you have subscribed to, is there any relationship and, if so, would you tell us in your view what it is, between the size of bank deposits and a diagnosis of general economic health in a community? A. Well, you see—

MR. BILGER: I object. I don't think he is qualified to evaluate that, Mr. Examiner.

PRESIDING EXAMINER: One second.

MR. BILGER: He has not been qualified as an expert at all.

PRESIDING EXAMINER: He certainly has been qualified as a banker and banking expert in the local small town banking community, small town banking expert.

MR. BILGER: We are not talking about loans or interest rates, but relating his banking business to the economy.

PRESIDING EXAMINER: I understand, but this does not require anything like an economic expert's eye-view of the local scene. This is a much more easily understood cause and effect relationship, it seems to me, Mr. Bilger. I think I am going to allow this question and let's see if it is not properly

[Tr. 479]

supported, in which case you may move to strike and let's see on what Mr. Burn bases his opinion. Let's get the details.

THE WITNESS: When we went into Harriman with the new bank, the branch bank and that office has acquired about a million dollars of savings accounts and have a million in additional checking accounts we didn't have in that territory. We have also in the last 15 or 18 months gone to Kingston, Tennessee, with a new branch office and we had a Drive-In Bank over across the river from our new location in Kingston that had savings of $180,000 and those savings today are about $500,000, $475,000 to $500,000, and we have also acquired about half a million dollars of checking accounts at that new office in Kingston.

As far as the home office is concerned, in the last three or four years, it has been practically on a level and our growth has been occasioned by new branch offices.

BY MR. KENKEL:

Q. You mean growth of deposits has been the savings deposits? A. Savings deposits of the two branches.

Q. And checking accounts? A. I would say there has been a slight growth in savings at the main office. But the checking accounts at the main office have not increased. Does that answer your questions.

Q. Yes. Let me ask this: The money placed in the

[Tr. 480]

savings deposits, in the savings accounts, as a banker, does it have any significance to you and, if so, what? What I am asking is, only to direct your attention to the area of my inquiry, does it mean the money is being spent in the community or being saved, if you have had any experience?

PRESIDING EXAMINER: No. No. I think we need more background than this, Mr. Kenkel.

Mr. Bilger, go ahead.

MR. BILGER: I object.

PRESIDING EXAMINER: Yes, I think that objection must be sustained. I think that Mr. Burn has testified to the facts. He says that the increase in the deposits is attributable to the bank's having itself branched out and gotten more deposits, but insofar as the local or main office is concerned those deposits have held pretty steady.

Those are the facts. Now, we can draw whatever conclusion we want, but I don't think we can go much farther on this point.

MR. KENKEL: I think that is all.

PRESIDING EXAMINER: Any other cross-examination?

MR. BILGER: I would like to ask a few questions.

RECROSS-EXAMINATION

BY MR. BILGER:

Q. Mr. Burn, if the bank deposits rise, generally speaking, without an increase, without being attributable to opening

[Tr. 481]

new branch offices, would it not indicate to you as a banker the economy is healthy? A. Yes.

Q. All right, let me ask you this question, sir: This is a point I am not clear on and I don't think the record is quite clear on. I want to go back to May, 1961, again, where you, as you said, bought the Crowder note and then Mr. Kenkel read into the record with you and had he told you at that time that he planned to open a radio station that you would not have bought it and I want to talk about that.

I believe your testimony was that you would not have bought it even without the refinancing. A. Yes.

Q. Now, I have not asked you a question, but have I characterized your testimony correctly? A. I think so, so far.

Q. How did it happen that you bought the Crowder note? Could you tell us how this trend got started and by whom?

MR. KENKEL: I object. I think we have been over this.

PRESIDING EXAMINER: Yes, we have. I think Mr. Burn testified.

MR. KENKEL: This is not related to redirect.

MR. BILGER: May I say how it is related. Mr. Kenkel read into the record the statement which Mr. Burn has placed into his bank's petition to deny.

[Tr. 482]

PRESIDING EXAMINER: All right, ask the question, Mr. Bilger.

MR. BILGER: That creates the inference, of course, we had some sort of duty.

Would you answer the question?

THE WITNESS: Repeat it.

PRESIDING EXAMINER: Read it back.

(The pending question was read by the reporter.)

MR. BILGER: How this was purchased is what I intended to say instead of "trend".

THE WITNESS: My best recollection is that Mr. Crowder had casually mentioned in times past he might like to sell me the note, but the amount was such that it would not be legal and at the time I had purchased it, I did purchase it, I don't recall whether it was Mr. Crowder that approached me or whether Mr. Crosthwait discussed the matter with Crowder and acted as an intermediary and asked if I would consider buying it.

Does that answer your question?

BY MR. BILGER:

Q. Does that complete your answer? A. Sir?

Q. Are you finished? A. I think so.

Q. Mr. Burn, it is true, is it not, that you could not advance money to Crosthwait and WHBT so long as Mr. Crowder

held that note as a first lien? A. No, that is abolutely not true.

Q. I thought that is what you said awhile back in your other testimony, you could not advance money unless the bank had the first position? A. Maybe I can clear it up for you. A bank cannot take a second mortgage if there is an outstanding first mortgage and then they will have to deal on a man's financial statement or his moral responsibility. You can make a loan to a man that had three or four mortgages if you thought he would pay. But you can't take a recorded mortgage if there is a recorded mortgage already outstanding because your lien then would be a second lien and would be illegal under the Federal statute.

Q. Did Mr. Crowder's note carry with it a first mortgage? A. What note do you speak of, of Mr. Crosthwait?

PRESIDING EXAMINER: No, the note that Mr. Crowder held that you eventually bought.

THE WITNESS: You see, it was the first mortgage lien to begin with and I stepped into Mr. Crowder's shoes.

BY MR. BILGER:

Q. I understand. Shortly after you bought the Crowder note, you did then lend money and take the first position on WHBT's assets? A. I already had it.

Q. How could you have a first position if Mr. Crowder

[Tr. 484]

had it?

PRESIDING EXAMINER: Well, they had bought the note of Mr. Crowder.

MR. BILGER: I see what he is talking about.

THE WITNESS: Let me state this. Under Tennessee law first liens on any kind of a lien that is part of a loan is considered one transaction. When I buy the note, I buy the collateral.

BY MR. BILGER:

Q. You just assumed automatic first lien when you bought the note? A. Yes.

Q. And then you could lend more money if you wished on the assets? A. Sure.

Q. Which you proceeded to do? A. I don't think I increased the first mortgage to any great consequence. I helped him raise more money through debentures?

MR. LETTERMAN: Helped who?

THE WITNESS: WHBT.

BY MR. BILGER:

Q. You mean Mr. Crosthwait as the manager, but after all it is the corporation also. Folkways Corporation is the corporation you dealt with.

PRESIDING EXAMINER: Folkways Broadcasting Corporation was

[Tr. 485]

the company you dealt with?

THE WITNESS: Yes.

PRESIDING EXAMINER: Mr. Bilger, is this a good spot for a five-minute recess?

MR. BILGER: Yes.

(Whereupon, at 3:15 p.m., a recess was taken until 3:20 p.m.)

PRESIDING EXAMINER: Back on the record, gentlemen.

Mr. Bilger.

BY MR. BILGER:

Q. One last question.

Did you lend Mr. Crosthwait $35,000 immediately after you purchased the Crowder note? A. I don't think so. I don't recall. We might have given him a line of credit which is a good deal of credit. You give lines of credit which sometimes are never used.

What is the question based on?

Q. Did you give Mr. Crosthwait a line of credit for $35,000? A. If there is an existing record, if there is an existing record to that extent I would say "Yes."

Q. No, Mr. Burn, answer the question. A. I don't remember any line of credit like that.

Q. Incidentally, your bank does tend to adhere to its $15,000 line of credit for Folkways FM Station, does it not?

[Tr. 486]

A. Why do you ask that? We never repudiated any agreement.

MR. BILGER: All right, I have no further questions.

PRESIDING EXAMINER: Mr. Letterman.

MR. LETTERMAN: I am afraid I have a few more questions, I didn't mean to do this, sir, but I wanted to ask you something about the economy you talked about.

BY MR. LETTERMAN:

Q. Let me understand something first. In 1960, your deposits were approximately $3 million. Is this approximately correct? A. I think so.

Q. And today they are approximately $8.3 million? A. That is the total resources today.

Q. That is the total resources? A. Yes, deposits are over $7 million. We have $600,000 capital.

Q. The deposits are over $7 million? A. Yes.

Q. Let me understand because I am a layman in this field? A. I am, too, in that respect, maybe.

Q. Well, I am just asking you, I want some help. A. Go ahead, all right.

Q. Now, are these deposits representative of stations

[Tr. 487]

accounts from individuals or what? A. Individual accounts. What we call commercial accounts until, say, three months ago had not increased over a period of a year or 18 months. Savings had increased.

Q. That is what I am interested in. A. Let me finish, if I may?

Q. All right. A. And we find that when the public is concerned about the future, they immediately increase savings accounts.

Q. No, that is not my question. I want to know only in terms, very simply, how much of the $7 million in deposits is represented by savings of individuals or corporations or entities? A. Now, they fluctuate from day to day. I can give you round numbers in millions. I would say $4 million in savings and $3 million in checking.

Q. Yes. A. It might be four and a quarter and three and a quarter. The savings in the last five years have increased.

Q. $4 million in savings? A. Yes.

Q. And $3 million in checking? A. Yes.

Q. Now, on the checking accounts, the deposits in the checking accounts, you do not pay interest, do you?

[Tr. 488]

A. That is correct.

Q. On savings accounts, you do pay interest? A. Pay four per cent.

Q. You pay four per cent on savings.

Now, with this increase in the volume of savings accounts, isn't it necessary or has it not been necessary for the bank to make loans in order to earn money so they could pay the interest on these savings? A. Well, we have been loaned up for two or three years.

Q. Loaned out? A. Loaned up.

Q. Loaned up. What does that mean? A. Very conservative banking would permit you to loan 50 per cent.

Q. Of what? A. Of the total deposits. Extremely liberal banking would commit you to loan 75 or even 85 per cent, which the New York banks do, and our loans have ranged from 55 per cent of deposits to 60 percent, because, in the last three months we have had a third of a million growth and our loan ratio is back down just slightly above 50 per cent, which is a very fine ratio for a country bank.

Q. Now, sir, you talked about 50 percent of deposits. Do you include in those deposits the checking account deposits? A. Total deposits.

[Tr. 489]

Q. So it would be 50 per cent or above of the $7 million figure? A. Well, let us say that our loans approximate $4 million.

Q. Now, can you break for us the nature of these loans? Do you categorize these loans as to say "all loans so much per cent and personal loans so much per cent and home improvement loans," do you categorize your loans like that? A. Every day.

Q. Can you tell us how they break down? A. I have not had occasion to look at it for several months, but I can give you round number percentages.

Q. Would you, please? A. We would have 35 to 40 per cent in long-term real estate loans and I would like to take a pencil as I go along with this, and we will have let us say 25 per cent in what we call personal loans, and that is on individual's signatures and no security.

We will have five per cent on automobile and appliances loans. We will have then let us say 25 per cent of commercial loans and commercial loans are to merchants and business people. Five per cent in farm loans and unclassified, but our system is that every day, every note is classified and we carry a ledger sheet and every day the amount that is paid on real estate loans is taken off and new real estate loans is added on.

[Tr. 490]

If you would like it in the record, I can give you as of any date the exact percentage of any of our loans.

Q. I think it would be very, very helpful if you could for the record, if you could supply that information for let us just take a convenient month, let's say January of 1967— A. I want you to fix a single date. I don't want to do it for every day.

Q. No, just one day but— A. One day in January.

Q. January, whatever day you pick, maybe the close of January would be best? A. All right.

Q. Of 1967 and January of 1965 and January of 1962. And you want these percentages for those dates.

Q. Yes. A. And to file them, well, we will file them, be glad to.

PRESIDING EXAMINER: To whom did Mr. Burn say that, to you, Mr. Letterman?

THE WITNESS: Do you want it in the record?

PRESIDING EXAMINER: Send it to Mr. Letterman.

THE WITNESS: I will send it to Mr. Kenkel.

MR. KENKEL: What shall I call it so I can make an appropriate note?

THE WITNESS: I would call it allocation of loans percentagewise.

[Tr. 491]

BY MR. LETTERMAN:

Q. When you say the bank is loaned out, that means you reached that 50 to 55 percent of your current deposits? A. We have loaned to the point that we won't make additional loans unless it is to an existing depositor to whom we are deeply interested, I mean, to take care of his loans.

Q. That is a customer of yours? A. Yes. We borrow money to take care of a customer, but, otherwise, there are times when we have surplus of money that we will take on loans that are even of a quality we would not take if money is tight. Now, money has been tight in our bank for, let us give, say, for the year 1966.

Q. It has been tight, but isn't it— A. And in the last three or four months it has loosened up a little bit.

Q. That has been for certain reasons we won't go into now.

But now, generally speaking, you used a term "Economy"— "The economy is reflected in some way or another in the banking business." A. Well, the economy, to me, is the payrolls that come in the town, the retail sales and bank deposits and all of those elements.

Q. For example, won't retail sales be one inditia or indication to you as a banker of the healthiness or non-healthiness

[Tr. 492]

of the economy? A. Yes, and I know how it has been; it has been unhealthy because the retail merchants are suffering.

Q. That is from the record, whatever the record is on retail— A. Yes, we know, we know from the deposits of the retail merchants.

Q. We will find out in different ways what the retail sales are. That is the thing which we can establish otherwise, but I say whatever they are it is an indication and indicia of the relative healthiness of the economy? A. I would say as to the local situation, and I happen to know that the local merchants have been suffering. I don't care what national statistics may show. I am testifying now that the local situation is not healthy.

Q. I am talking about local. A. O.K.

Q. Now, has there been any other new industries open up in Harriman except the steel mill and when I talk about Harriman talking about the enlarged Harriman, I understand there is an annexation? A. Yes, South Harriman was brought in by annexation.

Q. The population is now 10,000? A. Larger.

Q. How big is it?

[Tr. 493]

A. 12,000 to 14,000.

Q. 12,000 to 14,000. In this particular area, is there any new industries outside of the steel mill that you mentioned? A. That is not in Harriman, it is probably closer to Rockwood than Harriman.

Q. Rockwood is only about 8 miles away? A. That is right, it is between the two towns.

Q. We are talking about in Roane County. A. The only thing I recall at the moment that came into Roane County is the new steel mill which has been operating a few months and—

Q. Could yougive us more details, what steel mill is that? A. Well, it is a new process that uses electrical energy and it is my understanding they use largely scrap metal of old automobiles. They are baled and brought in and melted and made into steel billets. It is not big, but maybe six or eight hundred feet long and employs 200 or 250 people.

Q. It has been in operation a few months? A. It is just getting under way. It is a civic deal in which six or seven thousand people took a thousand bond to help get it going, and there is at the old airport on the road between Rockwood and Kingston, there is an apparent factory, garment factory of some sort, operated by the American Apparel

[Tr. 494]

Company, I think is the name of the company now.

It has been recently reorganized and they still train people. The building was put up by the county and I would say that five to six hundred people either are employed or being trained at the new factory. So we have two new factories in the county.

Q. That is about the extent of such expansion there might be? A. Yes, I don't know of anything else and I think I would if there is anything else.

Q. In adjacent counties, are you familiar with any development of large industries? A. Well, the nearest town to the south is Spring City, Tennessee—

Q. Excuse me for a moment? A. That is 17 miles to the south of Rockwood. Do you have that?

Q. I am trying to get it. I can't read it off of my own exhibit. I am looking to see where it is. A. It is in Rhea County, due south of Rockwood, which is in Roane County. Spring City. They built a new factory building there for an electronics concern out of Los Angeles. They had a strike that caused them to move out. They have a new industry in that building.

I could only make a wild estimate as to the number of

[Tr. 495]

employees. I would say 50 to 75.

Q. People? A. Yes, people.

Q. Not thousands? A. No, 50 to 75 wage earners. Crossville is growing pretty well. But it is 26 miles west. I don't think that its economy affects us in any way at all.

Q. Do any of the people in Crossville or in Rhea County trade, let us say, in Harriman? A. No, very little. Crossville is a pretty good trading center and it is on the mountain, on the plateau, 26 miles away, and I think they would go to Cooksville or Knoxville, or Chattanooga, they would not come to Harriman.

Q. What about any people, to your knowledge, that would reside in Morgan County, do industry or retail stores in Harriman or Rockwood or Kingston—do they draw business from Morgan County, any people? A. They always have to some extent.

Q. And could you make a statement with respect to Loudon County? A. That is too far away.

Q. That is too far away? A. Across the river and closer to Knoxville.

Q. How about Anderson County? A. They would go to Oak Ridge or Knoxville.

[Tr. 496]

Q. Either one but not Harriman? A. Not to Harriman. They are in a much smaller town and they don't trade that way, they would go to a bigger town.

Q. Yes, to the extent that business is drawn it would perhaps be from Morgan County to a greater or lesser degree? A. The only situation as I see it in Morgan County, the new steel mill would probably give employment to 25 to 40 people out of Morgan County and you would have that many more wage earners spending money in Morgan County and Harriman, $100,000 to $125,000 a year extra retail trade because some of the people in Morgan County do commute to the steel mill.

MR. LETTERMAN: Thank you very much.

PRESIDING EXAMINER: Anything else of Mr. Burn? May he be excused?

Mr. Burn, you are excused.

(Witness excused.)

PRESIDING EXAMINER: Mr. Kenkel.

MR. KENKEL: Mr. Examiner, may I just, as a preliminary matter, I am having trouble with your composite week.

PRESIDING EXAMINER: Yes.

MR. KENKEL: Specifically with Saturday, June 8, 1966, I find that June 8, 1966, was a Wednesday.

PRESIDING EXAMINER: I checked and double-checked that yesterday and I thought I was right. But if I made a mistake I am willing to acknowledge it obviously. Let us have the

[Tr. 675]

KENNETH J. CROSTHWAITE

* * *

DIRECT EXAMINATION

BY MR. BILGER:

* * *

[[Tr. 782]

Q. And then two or three years later you sold the corporation, did you not, or the assets of the corporation? A. I sold it in 1956.

Q. That is correct. From there you went where in the broadcast business? A. Sanford, Florida.

Q. You acquired a station there? A. Yes.

Q. You kept that for a year? A. Roughly.

Q. You left there and got another facility? A. Yes, I purchased the stock in the Folkways Broadcasting Co. in Harriman, Tennessee.

Q. We are up to WHBT.

From here on I am going to go a little bit more slowly.

Which year did you first become associated with WHBT? A. I believe the latter part of 1957. This is memory on my I am just guessing at this now.

Q. Who owned the station at that time? A. Folkways Broadcasting Co.

Q. Who comprised Folkways Broadcasting Co., Inc? A. Clarence Hank Snow and Ernest Tubb and I believe they were the only two stockholders. They owned the company.

[Tr. 783]

Q. You joined them in what capacity, sir? A. As Assistant manager.

Q. You owned no stock then? A. No.

Q. There came a time when you acquired stock? A. Yes.

Q. When? A. I do not remember.

Q. Do you remember from whom you purchased it? A. Ernest Tubb.

Q. Do you remember what you paid for it? A. Not exactly.

Q. What is—would the figure $5,000 refresh your memory? A. If the records say that, that is what it was.

PRESIDING EXAMINER: Now, where are we going on this point, Mr. Bilger?

MR. BILGER: To get to the finances and how he acquired the refinancing eventually from Mr. Burn who testified here two days ago.

PRESIDING EXAMINER: I see. All right.

MR. BILGER: If we have further questions, may we come to the bench on them?

PRESIDING EXAMINER: All right.

MR. BILGER: I do not want to be cloak-and-dagger or

[Tr. 784]

mysterious but I have a line of cross.

PRESIDING EXAMINER: Continue.

BY MR. BILGER:

Q. How much stock did you own after you bought out Mr. Tubb's stock? A. 50 per cent.

Q. Mr. Snow owned the other 50 per cent? A. Yes.

Q. Did there come a time when you purchased Mr. Snow's interest? A. Yes.

Q. When? A. I do not know the date.

Q. Give us the year. A. Again I would have to refer to the records. It would be just guesswork.

Q. Right. Now, I will try to help you. Please indulge me—I am having a difficult time working my way through these old records.

PRESIDING EXAMINER: Allright.

Now, I show you Mr. Crosthwaite, just to get the dates straight, the Commission's license file for WHBT Volume 3, and I show you three fifteen, FCC Form 315 which is marked as having been received on April 8, 1961 and purports to be a transfer of 50 per cent interest in WHBT, the license of WHBT from Mr. Clarence Hank Snow to

[Tr. 785]

to Kenneth J. Crosthwaite. A. Yes, sir.

Q. Is that the application which was used for you to acquire Mr. Snow's interest? A. Yes.

Q. Turn to page, Commission telegram June 13, 1961 which I refer you to, is that the Commission wire which authorized the acquisition of that interest from Mr. Snow by you? A. Yes.

Q. How much did you pay Mr. Snow for his 50 percent interest giving you 100 per cent control—do you recall? A. I would have to refer to the record, sir. I do not know.

Q. $8,000, does that refresh your memory? I show you the contract for purchase which was part of the 315 form and point to you the figure of $8,000. A. Yes.

Q. Is that what you paid Mr. Snow? A. Yes.

Q. Did you borrow that $8,000 from Mr. Burn or one of his banks? A. I assume I did, I do not remember. I assume so.

Q. Prior to 1961 you had business relationships with Mr. Burn, did you not?

[Tr. 786]

A. Yes.

Q. Now, at the time that you acquired Mr. Snow's 50 per cent interest and you already had 50 per cent, making you the 100 per cent owner of WHBT, did there come a time when you decided to refinance the position of WHBT? A. Yes.

Q. About what point in time was that, Mr. Crosthwaite? A. I would have to look at the records. I just do not remember.

Q. As of the time you acquired 50 per cent control of the station at least, that is when you bought Mr. Tubb's interest, you were aware of the financial condition of WHBT as of that date certainly, were you not? A. Yes, sir.

Q. And before you bought the remaining 50 per cent from Mr. Snow, did you enter into negotiations to refinance in the event you could purchase Mr. Snow's interest or to enable you to purchase Mr. Snow's interest? A. I do not know.

I would assume that I would have had to.

Q. All right. You did acquire—strike that.

You were aware that as of December 31, 1960, WHBT owed Mr. Crowder a remaining balance on the purchase money mortgage and note when Mr. Crowder sold the station to Snow and Tubb?

[Tr. 787]

A. Yes.

Q. Were you aware of that? A. I am not aware of the date. I do know we owed some money.

Q. Was it your desire to refinance in order to pay off that note? A. Yes.

Well, not necessarily pay off the note, it was my desire to refinance.

Q. In order to do that you had to pay off the note. A. Yes.

Q. Because it was as I understand it not only secured by a chattel mortgage on the personalty by a mortgage on the real estate the transmitter site.

PRESIDING EXAMINER: They call it a deed of trust in Tennessee, do they not? As they do in the District.

THE WITNESS: Yes.

BY MR. BILGER:

Q. For this reason it was necessary to pay off the Crowder note? A. Yes, sir.

Q. Did you approach Mr. Crowder with the proposition that he would sell the note to Burn? A. Yes.

Q. You did. And it was that basis then that you

[Tr. 788]

through the First National Bank and Trust Company of Rockwood-Mr. Burn's bank? A. Yes.

Q. And as a part of that refinancing Mr. Crowder was contacted, was he not, to come to the bank and the bank would pay off his note? A. Yes.

Q. In order to enable you to acquire funds to move ahead with WHBT? A. Yes, sir.

Q. And that is the way it happened.

PRESIDING EXAMINER: What was that year–repeat it?

MR. BILGER: May 2, 1961 according to Mr. Burn's testimony. According to the records, Mr. Burn was not sure of the precise date. I think the transcript will reflect this occurred in May, 1961.

BY MR. BILGER:

Q. Now, back then in 1961 you were 100 per cent owner of WHBT? A. Yes.

Q. There came a time when you divested yourself of some of that stock interest? A. Yes.

Q. How much and to whom? A. I cannot remember the dates but the time I believe

[Tr. 789]

that 10 per cent went to Mr. Carrigan and 10 to Mr. Roberts.

Q. They were employees at the time? A. Yes.

Q. Then that cut you back to 80 per cent? A. Yes.

Q. I am looking at the ownership report and I am going to read you what it says. If you think it is correct, fine or I can show it to you. As of August, 1962 you owned 80 per cent of it, Mr. Carrigan owned 10 and Mr. Roberts owned 10? A. If the record says that.

Q. Let us do it properly without expediting too much. I show you Commission's ownership file for this station WHBT and I show you a time date stamp August 24, 1962, Received in the Commission, is that your signature there? A. Yes.

Q. And it is an ownership report FCC Form 233, the second which reflects what I indicate it did—the stock ownership does it not? A. Yes.

Q. It also indicates you were then president, Betsy S. Crosthwaite I assume that is your wife, was the Secretary? A. Yes.

Q. Was the Secretary and Mr. Carrigan Vice President and Mr. Roberts, Treasurer? A. Yes.

[Tr. 790]

Q. Did there come a time when that stock interest changed? A. Yes.

Q. To what, sir? A. An additional 5 per cent was to Grant Roberts and 5 per cent to William R. Carrigan.

Q. Taking you back to 70 per cent, then? A. Yes.

Q. And each of them 15 per cent? A. Yes.

Q. Is that the way it stands today? A. Yes.

Q. I show you now what is a part of the Commission's ownership files for WHBT, again a Form 323 and ownership reports signed as 4-6-67 by Mr. Crosthwaite, is that your signature? A. Yes.

Q. And that ownership file reflects that you are still president and that you are a director and that you own 70 per cent of the stock? A. Yes.

Q. Mr. Carrigan vice president, a director and 15 per cent stockholder? A. Yes.

Q. Betsy S. Crosthwaite your wife is secretary and Director with no stock interest?

[Tr. 791]

A. Right.

Q. Grant E. Roberts, who is now listed as living in Orlando, Florida, is a treasurer and a director and 15 per cent stock holder? A. Yes.

Q. There came a time did there not, when you bought, you and others bought a radio station in Welch, West Virginia? A. Yes, sir.

Q. When was that, do you recall? I will be more specific. When you are quite sure you obtained commission approval to obtain the station and there came a time again when you closed the transaction and notified the Commission of that, what was the date you closed? A. The effective date of takeover was January 1, 1964.

Q. Prior to that time you had negotiated the purchase with the previous owner, had you? A. Yes.

Q. How much stock do you own in that radio station? A. 68 and 2/3 per cent.

Q. By the way, the name of that licensee is WOVE, Inc. and the call letters are WOVE? A. Yes.

Q. You own 68 and what? A. 68 and 2/3rds, I believe is the per cent.

Q. And you hold an office?

[Tr. 792]

A. Yes, sir.

Q. What office is that? A. President and I am a director.

Q. Also the general manager, are you not? A. Yes.

Q. You are active up there in the day-to-day operation of WOVE? A. Yes.

Q. And have you occupied those three positions since, what was the date you said you closed? A. January, 1964 for the purchase of the station.

Q. Yes. A. As general manager, yes.

Q. Now, your other two stockholders up here, your other three stockholders are whom? A. Mr. Harry Burn.

Q. Yes. A. Mr. Tommy Brown and Mr. Don Crosthwaite.

Q. Donald Crosthwaite is your brother? A. Yes.

Q. How much stock do all of those people own, respectively? A. Giving them in round numbers, it is roughly 17 for Mr. Burn and 7 for Mr. Brown and 7 for my brother, Don.

[Tr. 793]

It is rounded off, of course, 7-1/2 or something like that.

Q. I guess Donald S. Crosthwaite bought that stock of Mr. Fulcher, that he used to have? A. Yes.

Q. I will show you the license file for WOVE, Inc., in an ownership report dated June 8, 1966 is that your signature? A. Yes.

Q. Received in the Commission on July 1, 1966. This indicates - does it not, that Harry T. Burn is secretary-treasurer? A. Yes, sir.

Q. That he owns 17.1 percent of the stock? A. Yes.

Q. Tommy Brown is not an officer. He is a director and owns 7.2 per cent? A. Yes.

Q. The same is true with respect to Donald S. Crosthwaite? A. Yes.

Q. In other words, he is a director and he owns 7.2 and he is not an officer. A. Right.

Q. Mr. Harry T. Burn is, however, a director as well,

[Tr. 794]

is he not? A. Yes.

Q. Is that the current situation? A. Yes.

Q. Now I go to a different subject. I assume that is the ruling as far as we have gone, we cannot go into your past history.

PRESIDING EXAMINER: That is the ruling.

MR. BILGER: I understand.

BY MR. BILGER:

Q. During 1965 what was the average number of advertisers you had on WHBT, please? A. I would not have any idea, sir.

Q. Your answer is you do not know? A. No, I do not know.

Q. In 1961, Mr. Crosthwaite, during the calendar year 1961 do you recall what income you derived from station WHBT, you, as an individual?

MR. KENKEL: I am going to object, your Honor.

PRESIDING EXAMINER: Yes, where does that refer to this case, Mr. Bilger, except that it may relate to the question of financing?

MR. BILGER: Of course. I want to know not only from him but when I get the books, what any officer or director

[Tr. 797]

You do not need to apologize.

BY MR. BILGER:

Q. Now, when you purchased WOVE, Mr. Crosthwaite, was any part of the purchase price financed through a commercial institution?

MR. KENKEL: Object to that unless there is some connection.

PRESIDING EXAMINER: We have testimony of Mr. Burn's participation in the matter. Does this relate to that, Mr. Bilger?

MR. BILGER: It does, because Mr. Burn was less than certain about it.

PRESIDING EXAMINER: The objection is overruled.

THE WITNESS: The actual purchase price was not financed.

BY MR. BILGER:

Q. Did you borrow any money from Mr. Burn personally on behalf of your corporation WOVE, Inc., to purchase this facility? A. If I remember correctly, –may I see if I understand the question. Did WOVE borrow money from the bank to purchase the station?

MR. BILGER: Yes, sir.

THE WITNESS: As far as the purchase price, no, sir.

MR. BILGER: Did you borrow money for any purpose from

[Tr. 798]

Mr. Burn or his bank?

THE WITNESS: I had personally borrowed some money when I first made the offer for the station but this was on an individual basis and then when the corporation was formed, this money was not used for that purpose.

BY MR. BILGER:

Q. Well, all I want to know is back when you bought the station, were you indebted, as a result of this purchase of the station to Mr. Burn, did Mr. Burn help you finance the acquisition is what I am asking you, over in Welch? A. The station was purchased by preferred stock, not from loan money.

Q. Is the question clear to you? A. Yes. You see, I have to a low memory as to what actually happened.

Q. I showed this to Mr. Burn the other day - the this is license for WOVE, license file, it is the 314 the application to assign a license for station WOVE and it is dated 22 August, 1963 and is that your signature? A. Yes.

Q. I refer you now to Spec. 3 page 1 which lists $25,000 deposted in the First National Bank & Trust Co. of Rockwood, Tennessee. Were those funds or any part thereof advanced by Mr. Burn or his bank?

[Tr. 799]

A. I believe this came from preferred stock, from the sale of preferred stock.

Q. Do you know? A. Not without checking the record, no.

Q. This is the stock that you were present and heard Mr. Burn testify about the other day? A. I do not remember that testimony.

Q. You have been present in the hearing room since Monday. You did hear Mr. Burn testify, that is my question? A. Yes, I did.

Q. You did hear him testify that he assisted you in the sale of the preferred stock, did you not? A. Yes.

Q. Is this the preferred stock he was talking about that pertained to WOVE? A. Yes.

Q. It is almost 3:30.

MR. BILGER: Mr. Examiner, I think I can do a little better job if I look at these records in the light of the new situation we have in the morning.

PRESIDING EXAMINER: All right, Mr. Kenkel has an appointment 3:30 or thereabouts and we are now adjourning so he can keep it and it is not practicable to come back afterwards so we will adjourn until tomorrow at 10 o'clock. I have an oral argument at 9 in another case.

(At 3:30 p.m. recess taken to 10 a.m. May 12, 1967.)

[Tr. 840]

Would it be Draper and Darwin or something else?

THE WITNESS: At this moment, without checking the log, I couldn't be sure. I would think it would be Draper or Draper Darwin.

MR. LETTERMAN: Something along that line?

THE WITNESS: Yes. You would recognize it if you saw it.

BY MR. BILGER:

Q. Now, Mr. Crosthwait, during the course of the last several weeks while you were presumably preparing your case, did you have an occasion to speak about revenues and losses with the owner of the Rockwood station as to what he has experienced since August of 1966? A. I have spoken to Mr. Holloway several times about his operation, yes.

Q. Well, more specifically, did you speak to Mr. Holloway and ask him what his experience had been revenuewise since the advent of WXXL, and by that I mean from August of last year, August 12th up to date?

MR. KENKEL: I am going to object, Your Honor. I don't know that this has anything to do with the direct. As I recall, when Mr. Burn was here, Mr. Bilger and perhaps Mr. Letterman also, objected to any discussion about WRKH, Rockwood and economic matters. I am going to object.

PRESIDING EXAMINER: Let's get the form of the question

[Tr. 841]

precisely. How did it read?

(The pending question was read by the reporter.)

PRESIDING EXAMINER: WXXL is one thing. Now, what is the objection?

MR. KENKEL: I have expressed the objection, Your Honor.

PRESIDING EXAMINER: What is that? You said that there had been any objection to any testimony regarding WRKH?

MR. KENKEL: Yes.

PRESIDING EXAMINER: There wasn't anything about WRKH as I heard the question read.

MR. BILGER: WRKH, Mr. Holloway owns the Rockwood station. Now, the purport of the question, Mr. Burn did testify to two facts, sir, two allegations regarding the Rockwood facility.

One, the Examiner will recall that he said Mr. Holloway, in his opinion, was driving his health into the ground operating it, and secondly, that the statement in his judgment was barely getting along.

PRESIDING EXAMINER: That is right.

MR. BILGER: And also it is well within the service area of WHBT and WXXL, Rockwood and Harriman and Kingston all together.

PRESIDING EXAMINER: It certainly has a bearing on the question of economic impact. There is no question about that. The objection is overruled.

[Tr. 842]

MR. BILGER: It has some bearing on the veracity and astuteness perhaps, being charitable to Mr. Burn.

PRESIDING EXAMINER: No, no.

MR. KENKEL: Then I have obviously another ground. We have no showing that this is the same discussion that Mr. Bilger is now asking about.

MR. BILGER: I am not talking about Mr. Burn's discussion. It is Mr. Crosthwait's. I am attempting to elicit from him what he discussed with Mr. Holloway as to the economy.

PRESIDING EXAMINER: We are not going into a question of Mr. Burn's veracity or anything else through cross examination of Mr. Crosthwait at this point, just because it is not the way to do it. That is not the order of proof, but we are doing it on another basis now. This is on the question of economic impact.

BY MR. BILGER:

Q. I don't think you answered the question. A. Yes, I talked to him and he told me that his business was good. I didn't see his records, sir.

Q. But he did say his business was good? A. That is right. I have no reason to doubt him.

MR. LETTERMAN; What was the finishing touch to your comments, sir?

THE WITNESS: He said his business was good and I said I haven't seen his records. However, at this time I have no

reason to doubt what he said.

MR. BILGER: Now I am going to explain, if I may, sir, the premise for the next question. Don't you answer, please, until counsel has an opportunity to object. I am going to direct a series of questions to the witness regarding his contacts, if any, or any of his people, with regard to the Livingston operation and the responses they may or may not have gotten on inquiries as to how active or inactive Mr. Crowder was back in the days when he was supposed to have fifty percent interest.

One of the issues, of course, is trafficking. You have a photograph or two in evidence about a house. The clear inference is he must have had the house and must have been there and worked in the Livingston plant. This must have been the issue raised in 1961. Our position is that he had a fifty percent interest and was not active at all.

Now, there are several employees still at the Livingston station since 1956 and 1957 still there. It is my information that these employees or some of them were approached and were asked about this specific thing this year, not back in 1961 or 1962, but this year, as to how active Mr. Crowder was, was he there, did he give orders, and I should like to elicit from this witness what those responses were, if he knows.

PRESIDING EXAMINER: Now, Mr. Kenkel.

MR. KENKEL: If the witness was there?

[Tr. 1256]

PROCEEDINGS

PRESIDING EXAMINER: Let us go on the record.

MR. KENKEL: I believe Mr. Crosthwait was on the stand on cross.

MR. LETTERMAN: Your Honor, I believe yesterday I had Mr. Crosthwait on. I am sorry I am going to have to shut the door.

PRESIDING EXAMINER: Mr. Letterman.

MR. LETTERMAN: Yesterday, I believe I had Mr. Crosthwait on cross-examination and we were finishing up with a listing of certain accounts and I believe Mr. Crosthwait had completed the listing that I had asked for. If I may have a moment for meditation.

PRESIDING EXAMINER: All right.

Whereupon,

KEN CROSTHWAIT

the witness on the stand at time of recess, resumed the stand, and testified further as follows:

CROSS-EXAMINATION (Resumed)

BY MR. LETTERMAN:

Q. Mr. Crosthwait, perhaps you would like to check the area of testimony previously given in connection with, I believe it was negotiateds in 1961 in which Mr. Crowder's note, I believe it was in the amount of approximately $23,000, give or take $2,000, was purchased by the bank. Are you familiar with that

[Tr. 1257]

particular transaction? A. Yes.

Q. Could you tell us, was the note in question on which Mr. Crowder had held originating with the original purchase of the station by yourself? A. The note Mr. Crowder had was original purchase of the station before he bought the broadcasting company.

Q. By the corporation, Folkways Broadcasting Company? A. Yes.

Q. And the records will show your interest in Folkways. When I said "by yourself" I meant by licensee WHBT, Inc.? A. Yes.

Q. At that time, as I understand it, Mr. Burn, or the bank, that is, purchased the note from Mr. Crowder, and can you tell us, did he look for payment of that note or a substitute note from WHBT, Inc.? A. Yes.

Q. And can you tell us how that was financed or how that was handled? The details of how it was handled? A. The purchase of the note from Mr. Crowder?

Q. Yes, and how the note was paid from that point forward? A. Well, to do the refinancing, Mr. Burn had mentioned the fact, of course, he couldn't handle a note where there was a prior mortgage. I contacted Mr. Crowder and told him of this

[Tr. 1258]

situation and asked if he would release the note upon payment and he agreed to and we agreed to meet at the bank. Then, of course, after the bank purchased the first mortgage note it was then able to get into the refinancing of the station for Folkways. We paid the bank payments I believe of $500 a month.

Q. And curtailed that particular obligation? A. Yes.

Q. And curtailed the obligation which the bank had acquired as a derivative of the Crowder note? A. That is right.

Q. Now, at that time there was some mention of debentures. Were there also debentures sold on or about that time for additional funds? A. That is right.

Q. And later these debentures were retired, I believe? A. Yes.

PRESIDING EXAMINER: In other words, Mr. Letterman was right yesterday, that the debentures were issued in connection with the original purchase of the station?

THE WITNESS: No, sir.

PRESIDING EXAMINER: Or they were on the refinancing aspect, is that it?

THE WITNESS: In the refinancing, yes.

PRESIDING EXAMINER: Refinancing, all right, that is it.

[Tr. 1259]

BY MR. LETTERMAN:

Q. As I understand the situation, and you tell me if it is correct or incorrect, the bank could lend up to $25,000 on first trusts on station property, is that correct? A. That is right.

PRESIDING EXAMINER: No. No. If you are going to get into another aspect of bank lending, that–is Mr. Crosthwait competent to answer on that point? Mr. Burn answered. He said the amount was in excess of the amount that the bank could loan to a single individual. Whether it was $25,000 or what, I don't know what the amount was.

MR. LETTERMAN: I think the gentleman here is certainly competent to testify as to the transactions he was in himself.

PRESIDING EXAMINER: I am wondering about the exact amount. I don't want the record confused because Mr. Burn may have testified to a different precise figure.

MR. LETTERMAN: As I understood it, the amount was $25,000 subject to what the record shows. I think it was $25,000. At least the bank made loans to WHBT in the amount of $25,000 based on the first mortgage of station property, is that right?

THE WITNESS: That is right.

MR. LETTERMAN: Then, as I understand, the station would then pay on that $25,000 note that the bank would hold, is that right?

THE WITNESS: That is right.

[Tr. 1260]

BY MR. LETTERMAN:

Q. Then when the $25,000 was paid off then they could acquire an additional $25,000? A. You might assume that. I mean there was no obligation to the bank to negotiate five years from the date of the original refinancing of this.

Q. But the fact is they did negotiate with you perhaps around five years, is that right? A. That is right.

Q. And lent you another $25,000, right? A. Right.

Q. And you used that $25,000 to retire the debentures, is that right? A. That is right.

MR. LETTERMAN: Your honor, I have no more questions of Mr. Crosthwait and may I thank you very much, sir.

PRESIDING EXAMINER: Mr. Kenkel.

MR. KENKEL: Yes, I have a few items on redirect, and with your leave, sir, I would also like to take up with Mr. Crosthwait matters which might be considered as new direct and indeed they are. As I have previously indicated we had planned perhaps additional witnesses from WHBT, but in view of the watchword of expedition and Mr. Crosthwait being here, I think the exhibits can come in through him and save us the problem of qualifying another witness and bringing another one up.

[Tr. 995]

PROCEEDINGS

PRESIDING EXAMINER: Let us go on the record, gentlemen. Mr. Kenkel.

MR. KENKEL: Yes, Mr. Examiner. In response to a subpoena duces tecum, there is Mr. Jack Harvey present this morning, and with consent of counsel, I would like to have Mr. Crosthwait's examination wait and put Mr. Harvey on the stand at this juncture.

PRESIDING EXAMINER: Any objection to it?

MR. BILGER: No objection.

MR. LETTERMAN: No objection.

PRESIDING EXAMINER: All right.

Whereupon,

JACK C. HARVEY

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KENKEL:

Q. Mr. Harvey, would you state your full name and spell it for the reporter. A. Jack C. Harvey, H-a-r-v-e-y.

Q. What is your residential address? A. 1907 White Oak Drive, Alexandria, Virginia.

Q. What, if any, employment or profession do you follow? A. I am an associate of Blackburn and Company, Inc., and

[Tr. 996]

we are media brokers.

Q. Media brokers include the sale of radio and television stations? A. Yes, sir.

Q. How long have you been with the Blackburn Company? A. Since June—sorry; I joined Blackburn, Hamilton Company in June, '56 and have continuously been with either that company or its successors since that time.

Q. The present Blackburn Company, Inc., is a successor to Blackburn, Hamilton? A. One of them.

Q. Now in your position with the Blackburn Company, sir, do you have occasion to maintain and utilize certain files in the office? A. Yes.

Q. Among such files, do you have files pertaining to Radio Station WHBT, Harriman, Tennessee? A. Yes.

Q. Do you have such files with you today, sir? A. Yes.

Q. Directing your attention to the year 1954—Let me ask you to strike that pending question. In the file you have with you today, what is the date, the earliest date of the memoranda copy of correspondence or instrument in your files? A. The earliest date is June 22, 1955.

[Tr. 997]

Q. And what is the instrument under that date, sir? A. Well, there are several. There is a letter from Clifford Marshall to Mr. Freeman Crowder.

Q. From Clifford Marshall? A. Yes; he is an associate of Blackburn, Hamilton Company.

Q. Addressed to Mr. Freeman Crowder at what address? A. Radio Station WHBT, Harriman, Tennessee.

Q. What is the next item? I understand there are several items? A. There is also an item dated June 22, 1955 which is Blackburn, Hamilton Company's listing agreement, and this is signed by Mr. Crowder and Mr. Marshall.

Q. May I see that, please? A. Yes.

Q. Do you know Mr. Clifford Marshall? A. I do.

Q. Is that it? A. That is it.

PRESIDING EXAMINER: All right; "That is his signature?" That is the question, is it not?

MR. KENKEL: Yes.

BY MR. KENKEL:

Q. The letter of June 1 is a copy of a letter regularly maintained in the files of the Blackburn Company—Strike that. June 22; I am sorry

[Tr. 998]

A. Yes.

Q. And similarly, the listing agreement? A. Yes.

Q. And what, if anything, is the next item, sir? A. This is the original of the letter of June 24 to Mr. Marshall from Mr. Crowder, enclosing, or returning the signed listing agreement, covering letter.

Q. What is the next item you have? A. It is a copy of a letter dated July 6 from Mr. Marshall to Mr. Crowder.

Q. That is July 6, 1955? A. '55, yes.

Q. And may I see that? A. Yes.

Q. What is the next item, sir? A. It is a copy of a letter dated July 8 from Mr. Marshall to a Mr. Carter Parham, Chattanooga, Tennessee.

Q. P-a-r-h-a-m? A. Yes.

Q. Is there any indication of a carbon copy of that letter being sent? A. There is not.

Q. What is the next item?

MR. LETTERMAN: Before you go to that, let's be sure we get the full date.

[Tr. 1021]

CROSS-EXAMINATION

BY MR. BILGER:

* * *

[Tr. 1023]

of this witness you are responding here in response to a subpoena duces tecum?

THE WITNESS: Yes.

MR. KENKEL: All right.

BY MR. BILGER:

Q. Mr. Harvey, the files you brought today from your company, are those kept in the routine course of business over there? A. Yes.

Q. For each one of the stations you represent or attempt to sell, do you have a similar file? A. Yes.

Q. Would you hand me, please, the one for WHBT? A. Yes.

Q. I show you a document contained in that file directed to a Jim Blackburn, a copy to Mr. Ray V. Hamilton and Bill Stubblefield, and you referred to it, I think, in your direct testimony, did you not? A. Yes.

Q. Is the information contained on that particular page—is that what you would refer to as a listing information? A. Yes.

Q. And you would normally acquire it from a prospective seller in the normal course of business, that sort of information?

MR. KENKEL: Objection your Honor.

[Tr. 1024]

PRESIDING EXAMINER: What grounds, Mr. Kenkel?

MR. KENKEL: On direct examination, in our discussion on the earlier argument, as I understand Mr. Bilger's position it was that this witness himself had not prepared the filing, on the mailing, so we had the problem, so unless it is first shown he prepared this file, I object to it.

PRESIDING EXAMINER: We are not on that point on the question of mailing, but on the question of meaning perhaps of the letters that were mailed, and so on.

All right.

THE WITNESS: Would you ask the question again?

MR. BILGER: Would you read it?

(The pending question was read by the reporter.)

THE WITNESS: That is the kind of information which we would normally acquire, at least part of it from the prospective seller and perhaps some from other sources.

MR. BILGER: I want to have this marked.

Mr. Examiner, on behalf of Mr. Crowder, I would like this particular document marked for identification as Crowder's Exhibit 30.

PRESIDING EXAMINER: The last was 25.

MR. BILGER: I have some others in between that and I think 30 is the appropriate number for this.

PRESIDING EXAMINER: Let this document be marked as Crowder's Exhibit 30 and have you identified what is the date,

[Tr. 1025]

and so on?

(The document referred to was marked Crowder's Exhibit 30 for identification.)

MR. BILGER: What has been marked as Crowder's Exhibit 30 bears the dates of August 12, 1955. It consists of one page, a memorandum directed to Mr. Blackburn with copies to Messrs. Hamilton and Stubblefield from Cliff Marshall and subject is "WHBT, Harriman, Tennessee," and may I withdraw it to make copies?

PRESIDING EXAMINER: Of course.

BY MR. BILGER:

Q. Mr. Harvey, if you will, give me the file for WDEH.

PRESIDING EXAMINER: When I say you can withdraw it, remember these are Mr. Harvey's.

MR. BILGER: Yes, I shall return the originals to him and make copies.

PRESIDING EXAMINER: All right.

THE WITNESS: Yes.

BY MR. BILGER:

Q. Mr. Harvey, I show you again what I shall refer to as a listing regarding WDEH in Sweetwater, Tennessee, and was the information contained in there acquired, if you know, from the seller? A. Well, I don't know, but I don't know where else the

[Tr. 1026]

information could have come from.

Q. While you did not do it personally, this is the normal information acquired from a seller when you list it for sale, is it not? A. Yes.

MR. BILGER: Mr. Examiner, I should like to have this marked for identification as Crowder's Exhibit 31.

PRESIDING EXAMINER: It may be so marked and the date is what?

MR. BILGER: Yes, the date of Crowder's Exhibit 31 for identification is August 12, 1955.

(The document referred to was marked Crowder's Exhibit 31 for identification.)

MR. BILGER: It consists of one page, a memorandum to Mr. Blackburn with copies to Messrs. Hamilton and Stubblefield from Cliff Marshall regarding WDEH, Sweetwater, Tennessee.

May I withdraw it and make copies?

PRESIDING EXAMINER: Certainly.

BY MR. BILGER:

Q. Mr. Harvey, will you let me have the file for WLIV, please, sir? A. Yes.

Q. Mr. Harvey, I show you document taken from the file pertaining to WLIV, your file, Blackburn's file, and ask you if

[Tr. 1028]

yes.

Q. Well, the information contained on this particular sheet is pertinent to WLIV, is it not? A. Yes.

MR. BILGER: Mr. Examiner, this is a document I should like to have marked as Crowder's Exhibit 32 for identification.

PRESIDING EXAMINER: Its date is what?

MR. BILGER: It bears no date, sir. The word "confidential" is printed at top of the page. It is a one-page document and it contains certain statistics relating to WLIV. That is the Radio Station WLIV, Livingston, Tennessee.

May I withdraw this and make copies?

PRESIDING EXAMINER: Surely. When I give these broad authorizations, I don't mean to tresspass on Mr. Harvey's ownership or his company's ownership of these documents. This is for procedural purposes only and I hope Mr. Harvey understands. I am not asserting dominion over the documents.

THE WITNESS: Yes, I do, sir.

BY MR. BILGER:

Q. Mr. Harvey, I hand you now your company file for WLIV, Livingston, Tennessee, and what is the earliest date on any document contained therein directed either to or from your company by WLIV?

MR. KENKEL: Excuse me, I have part of that file here, sir.

[Tr. 1029]

BY MR. BILGER:

Q. I hand you also what has been marked for identification as WHBT Exhibits 28, 29 and 30, which are a part of the file, and I show you what has been marked for identification as Crowder's Exhibit 32, which is a part of your file. Now, I think your file is as complete when you brought it in here this morning. A. November 12, 1957–

Q. All right.

The most recent date in your file is what? A. August, rather April 23, 1965.

PRESIDING EXAMINER: What was the date, May 12, 1959– that was for another station or the most recent?

MR. BILGER: Most recent date I am referring to WLIV.

PRESIDING EXAMINER: WLIV, all right, I see.

MR. BILGER: The last two questions have been directed to that exclusively.

BY MR. BILGER:

Q. What was the most recent date? A. The most recent date is April 23, 1965, which I left in inadvertently because I was asked to bring the WLIV file for the period 1956-1964, inclusive, and I took out everything after 1964.

Q. All right. Your file, this particular file, contains, does it not, correspondence or copies of letters pertaining to

[Tr. 1030]

the sale of WLIV? A. Yes.

Q. Do you have any letter in there directed to Freeman L. Crowder or Mr. Crowder? A. I don't remember any such.

Q. Would you examine your file and make your answer as definite as you can? While you are looking, to save you doing it again, do you have a letter from Mr. Crowder in your file? A. There is no letter to Mr. Crowder or from Mr. Crowder.

Q. It is a fact, is it not, in the WLIV file to which you just referred, correspondence pertaining to the sale or prospective sale of WLIV was directed to a Mr. McCoin, exclusively, was it not? A. That is right.

MR. BILGER: I have no further questions.

MR. LETTERMAN: I have no questions of this witness.

MR. KENKEL: Nothing on redirect.

PRESIDING EXAMINER: What is the situation regarding Mr. Harvey's appearance, or prospective appearance here? May I be excused?

MR. KENKEL: I suggest he be excused.

MR. BILGER: I see no reason why not. I might say over the luncheon recess I shall prepare my copies and be happy to return, if Mr. Harvey wishes to come back at 2, hand him his copies.

[Tr. 1308]

Whereupon,

ROBERT WHEELER GALLAHER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILGER:

Q. Mr. Gallaher, would you state your full name, please? A. Robert Wheeler Gallaher.

Q. Where do you reside? A. Livingston, Tennessee.

Q. Are you presently employed? A. Yes, sir.

Q. Where, sir? A. WLIV, Inc., in Livingston.

Q. Is that the licensee of Radio Station WLIV in Livingston, Tennessee? A. Yes.

Q. How long have you been employed there? A. Nine years.

Q. That would put it back to what? A. Started work on November 1, 1958, I believe, sir.

Q. 1958. Have you worked at that station continuously since you began working there? A. Yes, sir, I have.

Q. In what capacity were you employed there at the

[Tr. 1309]

beginning? A. Sales representative and then sales manager of the station.

Q. Are you still working in sales of the station? A. Yes.

Q. Now, going back to your employment in 1958, who employed you? A. I was employed by Mr. R. H. McCoin, through the recommendation of Mr. Crowder.

Q. All right. During the course of the period that you have testified you have worked at WLIV, are you there on a day-to-day routine basis? A. Yes, sir, I am.

Q. From the time you were originally employed at WLIV, up through the year 1964, did you have occasion to see Mr. Crowder about the facility, WLIV? A. Very rarely, sir.

Q. About how frequently over the course of, let us say, a year would you see him there? A. Actually, at the radio station I would see him very rarely, once every four or five months, three or four months, or something like that. Very rarely. The only time I saw Mr. Crowder normally is when I went to visit him and that is about it.

Q. Did Mr. Crowder during the period of time to which I

[Tr. 1310]

referred, to wit, your original employment up through the year 1964, ever issue you an order regarding your duties?

MR. KENKEL: Objection, your Honor. Leading.

PRESIDING EXAMINER: That is leading, of course. Ask what he did and so on.

BY MR. BILGER:

Q. Yes. Although I must confess I don't understand why it is leading.

PRESIDING EXAMINER: Well, it does suggest the area, of course. Let's be a little more general.

BY MR. BILGER:

Q. Did Mr. Crowder give you instructions? A. No, sir.

Q. Did he give them to anyone else employed at the station in your presence? A. Not that I know of, not in my presence; no, sir.

Q. Did you receive at any time during the period in question any written document executed by Mr. Crowder?

MR. KENKEL: Objection. I think it is leading.

PRESIDING EXAMINER: I don't think so. No. I think that is permissible.

MR. LETTERMAN: He could rephrase it to ask "whether or not".

PRESIDING EXAMINER: Of course, I understand "whether or not" and there is also the danger of a leading question if you cast it in that form.

[Tr. 1311]

MR. BILGER: Also if you use the words "if anything" which is sometimes used as an escape valve which does not cure anything. I just want to get the facts.

PRESIDING EXAMINER: Let's get the facts. Did you issue any instructions at all? Well, you asked that. Are there any written instructions?

BY MR. BILGER:

Q. Written documents of any kind? A. No, sir, there were not.

Q. Insofar as you were concerned, who was operating the station during this period of time?

MR. KENKEL: Objection, calling for conclusion, not admissible.

PRESIDING EXAMINER: That is sustained but put it on the basis of the title. Who occupied a certain position?

BY MR. BILGER:

Q. Who was station manager during the period you were there? A. During the period I was with WLIV Mr. McCoin was solely general manager of the station and he ran it with an iron thumb.

Q. Did you at any time from the period you began working at WLIV through 1964 look to anyone other than Mr. McCoin for instructions? A. No, sir.

[Tr. 1312]

MR. KENKEL: Objection. It is leading.

PRESIDING EXAMINER: It is leading, of course, Mr. Bilger. Objection sustained.

BY MR. BILGER:

Q. Were you paid by check, Mr. Gallaher, at the station? A. Yes.

Q. Who signed the checks? A. Mr. McCoin.

Q. During the course of your employment from 1958 when you first went with WLIV through the year 1964, was there a change in employees, some hired and some fired, that sort of thing? A. Yes, sir.

Q. If you know, who did the hiring and the firing? A. Mr. McCoin did.

Q. Incidentally, is Mr. McCoin living? A. No, sir, he passed away last year.

Q. When you visited with Mr. Crowder, where was that in Livingston—well, was it in Livingston? A. Yes, I visited with him in Livingston at the 7-Up Bottling plant.

Q. During the period we are talking about from 1958 thru 1964? A. Yes, sir.

MR. BILGER: No further questions.

PRESIDING EXAMINER: Mr. Kenkel.

[Tr. 1313]

CROSS-EXAMINATION

BY MR. KENKEL:

Q. Mr. Gallaher, your date of employment at WLIV was November 1, 1958? A. Yes.

Q. At that time the licensee of WLIV was a partnership of Crowder and McCoin doing business as Audio Broadcasters? A. That is correct.

Q. How long were you employed by Audio Broadcasters? A. Well, let's see—

Q. In other words, you are employed by WLIV and how much of the period between November 1, 1958 and the present was by Audio Broadcasters? A. Well, it was up until the change of ownership from Mr. Crowder and Mr. McCoin jointly to Mr. McCoin altogether and I don't recall exactly when that was. It has been I guess a couple of years probably.

Q. A couple of years? A. Or longer.

Q. Longer. Using your best recollection, when was it? A. I am not certain, I believe a couple of years ago. Two years, I would say.

Q. Two years ago. You are originally from Harriman? A. Yes, sir.

Q. How long have you know Mr. Crowder?

[Tr. 1314]

A. I guess about all of my life, sir.

Q. Did you work for Mr. Crowder to November, 1958? A. No, sir.

Q. You visited Mr. Crowder at his 7-Up Bottling plant. Was he owner and manager there? A. Yes.

Q. Where would he be? In the office at the bottling plant? A. Normally, yes.

Q. On the premise of the bottling plant? A. Yes.

Q. How often would it occur, once or twice a week? A. No, my goodness, no. It would be once or twice a year, I guess. I didn't see Mr. Crowder very frequently.

Q. You saw him at the station you told us occasionally? A. Yes.

Q. You saw him at the bottling plant? A. Yes.

Q. You were the sales, time salesman, weren't you, for a period of time? A. Yes.

Q. Did WLIV carry advertising for the Crowder bottling plant?

MR. BILGER: Object. It is outside the scope of direct.

MR. KENKEL: This is in connection with the occasion of seeing Crowder apart from—

PRESIDING EXAMINER: O.K., objection overruled.

BY MR. KENKEL:

Q. Do you have the question? A. What was the question?

Q. Will the reporter read the pending question?

(The pending question was read by the reporter.)

THE WITNESS: Yes, sir, on rare occasions, not too much.

BY MR. KENKEL:

Q. Not too much? A. No, sir.

Q. Now, on the occasions it was carried, would you handle that account? A. Yes, sir, I have. I believe I have on occasions, yes.

Q. How did you do it? Physically, tell us what you did? Would you go to see Mr. Crowder or would he come see you? How were the time sales arrangements made? A. Really, there were not too many times we ran campaigns for Mr. Crowder. I think his opinion was that the bottlers, or the competitive bottlers in the area thought perhaps he might be taking advantage of me, that he owned part of it, and in fact I don't believe he ever used it over two or three times during the period of his ownership I was familiar with, not, well, very rarely.

Q. Are you telling us from November 1, 1958, until sometime approximately two years ago there was only two or three

[Tr. 1316]

times? A. Yes, that is correct.

Q. On these two or three occasions how was the time advertising arrangements made? A. I think Mr. Crowder came to the station probably—now, I mean this I am saying from memory. I don't guarantee it to be 100 per cent correct because I mean it was not that important a thing, really, but perhaps I might have seen him once or twice during that period of time.

I don't remember anything specific.

Q. Well, all of your testimony then— A. But I do remember this definitely, though, the fact I didn't think we were getting enough business from him.

Q. Did you go talk to him about getting more business from him? A. Well, I might have on occasion. I think I tried to sell him a race once or twice. Mr. Crowder is a car racing fan and I was trying to take advantage of that.

Q. You told us you were sales representative and then sales manager. You were a sales representative when you commenced employment in '58? A. Yes.

Q. And at what point in time did you become sales manager? A. Well, that is rather debatable really. I think Mr. McCoin had me listed in broadcast management one time as assistant

[Tr. 1317]

sales manager. My position of sales manager, I mean as far as the title itself is concerned, was not implemented until Mr. Gillespie owned the station, who is the present owner.

Q. That is the present licensee? A. Yes, my responsibility has been throughout my employment with WLIV, has been in the sales department.

Q. Is it true that until the new ownership, WLIV, Inc., that is, the ownership? A. Yes.

Q. Until the new ownership took over you were not sales manager? A. No, sir, I was not.

Q. You were not? A. Mr. McCoin, as I told you, I think as a matter of record Audio Broadcasters have him listed as president, had him listed as president, general manager and sales manager of the station.

Q. Excuse me, you were time salesman or sales representative from November, 1958, to the new ownership took over a couple of years ago, you were primarily, I am using the word "on the street" is a good connotation, you were out trying to get sales for Station WLIV, particular sales? A. No, sir, not correct, because our station is, we have about, I think presently a staff of about 8 to 10 people and my duties, I would like to say I am titled as sales manager but

[Tr. 1318]

always my duties have been varied, I have been working in all departments of it. In fact, a lot of my time is required at the station as far as writing copy, I write copy, and I do quite a few spot announcements as far as taping, and actually working up sales promotion, I guess, would be a very time-consuming part of my job which involves quite a bit of work.

Q. You visited Mr. Crowder at the 7-Up Bottling plant. Did you also visit him in Livingston during this period of time? A. I don't know whether I followed you?

Q. At other places in Livingston? A. No, sir.

Q. How about in Harriman? A. No, sir, not that I recall.

Q. When did you move from Harriman to Livingston? A. It would have been prior to employment, well, just a few days prior to being employed at the station.

Q. Didn't you have a contract of employment with Station WLIV during the period of 1958 until the time it was taken over by WLIV, Inc.? A. No, sir.

Q. How many of the salesmen, if any, other salesmen, if any, were there during the period of time, starting with '58 and bringing it forward, when you first went there, how many other salesmen were there? A. Well, let's see, full-time salesmen, there were no

[Tr. 1319]

other full-time salesmen. In our operation everybody does a little bit of selling.

Q. Well, I realize that, but full-time salesmen, you were the only one full-time? A. Actually, I devoted most of my work to selling; yes, sir.

Q. When you would have these conversations with Mr. Crowder, would you discuss station business with him? A. Well, in generalities, the main reason I would visit Mr. Crowder would be because we were friends through the years.

Q. You would like to help Mr. Crowder based on your friendship? A. Yes, based on my friendship.

MR. KENKEL: That is all.

PRESIDING EXAMINER: Mr. Letterman.

BY MR. LETTERMAN:

Q. Mr. Gallaher, as I understand, you did function as a salesman of the station. Didn't that cause you to go out and solicit business in the area in question? A. Yes.

Q. And did you do it on frequent occasions? A. Every day. I solicited business every day, yes, sir.

Q. That is what I wanted to understand, that your duties as salesman would entail going out and calling on accounts? A. Yes.

[Tr. 1320]

Q. And you did it as a regular thing each day? A. Yes.

Q. Won't it be a fact that most of your time, as the only full-time salesman of the station, would be taken up in soliciting business on the street, servicing accounts or in chatting with advertisers to keep up goodwill the station had with them, wouldn't that be true? A. Well, to an extent. I mean, really, it is hard to pinpoint it exactly, sir. I am in and out of the station all day long. I don't know how much time that is spent in it or out of it. I won't have any idea of knowing.

Q. Did it vary from day to day? A. Certainly.

Q. And from season to season? A. Yes, sir.

Q. Let's take the very busy season, say, around Christmas-time, wouldn't it require you to be out of the station the bulk of your time in order to service the accounts which you have? A. Well—

Q. And I am talking about the bulk of your time and I mean by that, let's say, you worked an 8-hour day hypothetically, wouldn't that require at least four hours of the 8-hour day for you to be out of the station to service these accounts at the Christmas season or just prior to that season to get the advertising contacts, the orders, the special business and orders?

[Tr. 1321]

A. Sir, I would be strictly just getting on that. I mean I never analyzed it to that extent, because, like I say, my duties are so varied and some of my days might be 12-hour days instead of 8-hour days and in fact they are more of that and not.

Q. Do you mean to say you can't tell us how much time, just as an average, you devote to affairs, your duties within the station, such as writing copy, servicing, or rather making tapes and servicing the clerical portion of the accounts, recording the time, and so forth, can't you make a division between that type of duty that would have kept you at the station and the time you were on the street, not on the street, but calling on your accounts in the community and environs of the community? A. I could make a guess at it, sir, but I won't say it would be correct because like I say I have never thought of it or analyzed it.

Q. Now, I am asking generalities along that line. Let me ask you specifically when were you at the station last? A. Saturday.

Q. Can you recall Saturday? A. Let me see–

MR. BILGER: I appreciate what Mr. Letterman is trying to do here, your Honor, but we are talking about last Saturday and one method, of course, of refreshing memory is taking it back day by day, but this is 1967, and I don't even know the period Mr. Letterman is asking about. Is it the period I asked

[Tr. 1322]

him about or '67, or what?

PRESIDING EXAMINER: Well, it is just a question of determining the opportunity that Mr. Gallaher had obviously to see whether Mr. Crowder was around the station. I think it can be asked this way.

MR. BILGER: Why not ask it this way?

PRESIDING EXAMINER: Mr. Gallaher testified he was in and out of the station, but I don't want to interfere with Mr. Letterman's cross-examination.

MR. LETTERMAN: The reason I asked him last Saturday, which is obviously not in the time in question, is because the witness apparently can only guess or says he can only guess as to the percentage of time as a general rule he spends at the station.

PRESIDING EXAMINER: All right.

BY MR. LETTERMAN:

Q. So I asked him if he can recall last Saturday. Can you recall that day? A. Yes.

Q. Can you make a division of the time on that day, how much time in the station and out? A. Normally on Saturday I don't normally–

Q. I am not asking normally but I am asking on that specific day do you recall? A. The best I recall, sir, I went to the station somewhere that come in and out of the station. A lot of time we will have businessmen come in the station to buy time. We have quite a bit of people that walk in the station and I spend quite a bit of time as far as that is concerned, in public service. Maybe we have a charity drive or something, I assist in helping them.

Q. Taking all of this in consideration and again using your term to describe it, which was a normal day, how much

[Tr. 1326]

time do you devote to these things at the station when you run from these various calls which you make in terms of hours? A. Well, it would vary, depending on whether I had to write the copy myself, I mean if we were busy, if the secretary was busy or whoever at the time would be writing copy, if they were busy and I was needed to help out I would spend more time in the station.

Q. In other words, sometime would you spend the bulk of your time out of the station? A. Yes.

Q. So there are times–

Is this the same type of schedule you had when Mr. McCoin was at the station? Generally? A. Generally, yes, sir.

Q. So there could have been occasions when Mr. Crowder did visit the station that you would not, let us say, have been there? A. That is true, yes, sir.

Q. Did Mr. McCoin have a private office? A. Yes, sir.

Q. You have no way of knowing, have you, how many times or when or on what occasions Mr. McCoin may have visited Mr. Crowder in Livingston, have you? A. No, sir, I don't.

Q. They could have been on any number of occasions, could

[Tr. 1327]

they not?

MR. BILGER: I object.

PRESIDING EXAMINER: The objection is sustained. Obviously, but the witness can't testify to anything meaningful along those lines.

MR. LETTERMAN: He did I think.

BY MR. LETTERMAN:

Q. You said you have no way of knowing whether Mr. McCoin visited Mr. Crowder while he was in Livingston? A. Other than what Mr. McCoin himself has told me, I mean in our personal relationship.

Q. I am talking about personal relationship, anything that you have seen? A. No, sir, not that I have seen; no, sir.

PRESIDING EXAMINER: Mr. Kenkel, anything else? Rather Mr. Bilger. Anything by way of redirect?

MR. BILGER: If you will indulge me, I am determining if I want to ask one question since it was brought out by Mr. Letterman what Mr. McCoin might have said since the man is dead.

PRESIDING EXAMINER: We have a case now of a statement against interest, but unless it fits in that category of a statement against interest of an unavailable witness, it might be possible to bring it in in that way, I don't know, because it is hearsay, but a statement against interest is an exception to the hearsay rule.

[Tr. 1328]

MR. BILGER: Mr. McCoin is dead but in response to one of Mr. Letterman's questions he said he didn't know except what Mr. McCoin told him and I don't know what Mr. McCoin told him and I am wondering if I might ask a question?

PRESIDING EXAMINER: You may ask a question, of course, but there may be an objection.

MR. BILGER: I think there might be, too.

I will ask it and let the objections, if it is made, stand. I will take my chance with Mr. Kenkel.

REDIRECT EXAMINATION

BY MR. BILGER:

Q. What did Mr. McCoin tell you, if anything, regarding conversations with Mr. Crowder about operating WLIV?

MR. KENKEL: I object.

PRESIDING EXAMINER: Don't answer it for the moment. What is the basis of your asking the question and hoping that you will get a valid answer, Mr. Bilger?

MR. BILGER: I am going to have to accept the answer, whatever it is. Of course, the subject was brought out in cross-examination or by direct that Mr. McCoin is dead and in cross-examination, in response to a question by Bureau Counsel it was elicited the witness did not know, of his own knowledge, about the relationship involved.

PRESIDING EXAMINER: That was merely a voluntary statement by the witness.

[Tr. 1329]

MR. BILGER: It was.

PRESIDING EXAMINER: And that is not to be the basis of any hearsay declaration on redirect unless it can be brought within the category of a statement against interest made by a person who is now unavailable because he is dead.

Is it against Mr. McCoin or was it against Mr. McCoin's proprietary or physical interest to make such a statement to Mr. Gallaher? I don't know. It doesn't seem so. I don't see how it could be. I don't see how anything of that kind could have been against his interest.

MR. BILGER: I don't either.

PRESIDING EXAMINER: All right, if the objection has been made and I must sustain the objection.

MR. KENKEL: It has been made.

PRESIDING EXAMINER: Had you made it?

MR. KENKEL: Yes, I am sure the reporter got it.

PRESIDING EXAMINER: Yes, it was made and I sustain it, all right.

MR. BILGER: I have no questions.

PRESIDING EXAMINER: All right, may Mr. Gallaher be excused?

(Witness excused.)

MR. BILGER: Mr. Examiner, as I indicated before I placed Mr. Gallaher on the stand and it was my intention to place that one witness on the stand because he is here, but I do not mean to imply I do not have other witnesses on this point or any other

[Tr. 1355]

PRESIDING EXAMINER: Mr. Scarborough, would you come forward, please.

Whereupon,

WALTER H. SCARBOROUGH

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BILGER:

Q. Would you state your full name, please, Mr. Scarborough? A. Walter H. Scarborough.

Q. And your residence, please, sir. A. Harriman, Tennessee.

MR. BILGER: Would you indulge me please, Mr. Examiner?

PRESIDING EXAMINER: Of course, Mr. Bilger.

BY MR. BILGER:

Q. Mr. Scarborough, I show you now the duplicate document file in this proceeding, the Commission's, and I refer you to a letter contained therein addressed to Mr. F. L. Crowder, bearing date of October 13, 1961, bearing the signature of C. R. Black, superintendent, Harriman City Schools.

Do you recognize that letter, Mr. Scarborough? A. I recognize the content of the letter.

Q. The content of the letter. A. Yes.

[Tr. 1356]

Q. Did you have anything to do with acquiring that letter? A. Yes, sir; I did.

Q. Would you tell us the circumstances, beginning from the beginning through the acquisition of that letter, please? A. Mr. Freeman Crowder with whom I had been associated previously in the radio business had come to me. He visited in my home several times and indicated to me that he was interested in filing an application for another radio station in Harriman and we talked about it because of our friendship and so he proceeded to file his application and he came to me one day and asked me—told me that he had received a letter from his attorney in Washington, suggesting that he file some letters substantiating the fact that the proposed programming for this proposed new station had been discussed with them and I suggested to him that I would help him with talking with some of the folks that we knew there in Harriman.

He was at the time very busy in Livingston where he was in another business, and I had a little free time and I told him that I would help him with this if he so desired me to do so.

Q. May I interrupt you now so our record is clear.

The other business in Livingston, do you know what it was? A. He had a bottling plant business in Livingston and also he was a part owner of a radio station in Livingston, his brother-in-law.

[Tr. 1357]

And I volunteered to help him in any way I could to gather the information.

We had discussed between us some of the programs that—

MR. KENKEL: I am going to object. I have let this much come in simply because I think it was not for the truth of the matter necessarily, but simply as I understood I would be a premise for, that the witness acted in reliance upon something. But from this point on I am going to object to any hearsay or discussions.

MR. BILGER: I don't under the basis for the objection.

PRESIDING EXAMINER: These are not hearsay propositions as yet. We are not getting to the point where anything has been offered to prove the truth of the matters asserted. All that we are discussing is—not negotiations, but discussions is all that we are having before us at the present moment.

This is the basis for the survey of whatever you want to call it that Mr. Scarborough made, so will you continue, Mr. Bilger.

BY MR. BILGER:

Q. Will you proceed. I interrupted you, Mr. Scarborough.

MR. KENKEL: Since we are interrupted, I'm going to object. I think this ought to proceed on a question-and-answer basis.

PRESIDING EXAMINER: Let's proceed on a question-and-answer basis.

MR. BILGER: Why should I have to do that, Mr. Examiner? I

[Tr. 1380]

CROSS-EXAMINATION

BY MR. KENKEL:

* * *

[Tr. 1385]

Q. Then you stayed in Kingston until 1959? A. Until I came back to work for that short time.

Q. You were Mr. Crowder's commercial manager at WHBT? A. That is right.

Q. I presume you worked with him pretty closely, didn't you? A. Well, yes.

Q. On a day to day basis? A. Yes.

Q. From the time you came back—I keep forgetting that date. When was it, after your Marine Corps experience? A. It was in 1952.

Q. From 1952 until the station was sold in 1956 you worked with him on a day to day basis? A. Yes, sir.

Q. The station was sold in mid-1956, June 1956? A. As I recall it.

Q. Directing your attention to the six months or a year or year and a half preceding that Mr. Crowder was operating in his business with you, wasn't he there? A. Yes.

Q. As far as you could tell he was in good health? A. As far as I could tell.

Q. As far as you could tell and as far as you know he was in good health. He never complained about poor health in

[Tr. 1386]

operating the station?

PRESIDING EXAMINER: I think we are asking for a layman's opinion about health.

MR. KENKEL: If you will have the question read I think that will meet the objection.

PRESIDING EXAMINER: I think it can be asked but I don't think it can be asked in those terms.

BY MR. KENKEL:

Q. Mr. Crowder never complained about ill health to you, did he, during that year or year and a half preceding the sale, preceding June 1956?

MR. BILGER: I object to the question unless there is some predicate laid for it why he should complain.

PRESIDING EXAMINER: Why he should complain?

MR. BILGER: Yes. The way the question is phrased, I don't think this witness is competent to answer that question.

PRESIDING EXAMINER: The point is that some people are very reticent about their health even if they are sick, and they may not complain. I don't think it is conclusive about a man's state of health because he does not say anything about it. So far as I would say it goes to the weight. When a man doesn't complain, that is about as far as we can go on this point. That is no indication at all that Mr. Crowder was not in ill health if that might be a contention. He might be very sick but he might be very stoical about it.

[Tr. 1387]

MR. LETTERMAN: Suppose he answered "Yes, Mr. Crowder told me that he really was not feeling very well and he was barely making it but he was trying to keep going," then where would we be?

PRESIDING EXAMINER: Then there is a statement regarding not a state of mind but about his state of body which, so far as I know, is not an exception to the hearsay rule unless it is made to a doctor or somebody like that who can check on it. So, let us find out what the answer is. Maybe we are just speaking in the wind anyhow, we are not saying very much, but let us find out what the answer is. There can be a motion to strike if necessary.

THE WITNESS: No, I remember the question.

The only question I could answer to that is that Mr. Crowder was not one to discuss his personal problems with me.

PRESIDING EXAMINER: That is not the question.

MR. KENKEL: May we strike the answer and have the Reporter read it back?

PRESIDING EXAMINER: The answer is stricken. Read the question.

(The Reporter read from his notes as requested)

MR. BILGER: I am going to object on different grounds. The grounds this time is that it exceeds the scope of the direct. I didn't ask any questions about Mr. Crowder's health or state of mind regarding his health.

[Tr. 1388]

PRESIDING EXAMINER: Yes. Are we not beyond the scope of the direct examination, Mr. Kenkel?

MR. KENKEL: Frankly, I don't think so. I can argue it on that basis plus while he is on cross-examination—let me put it this way: I think we are not exceeding the scope of the direct because we went into the relationship between Mr. Crowder and Mr. Scarborough.

PRESIDING EXAMINER: It had nothing to do with whether Mr. Scarborough was active at WHBT. There was some question about WLIV.

MR. KENKEL: I think it ties in, if there is going to be a comparison, so I will say it is within the broad scope of the direct.

PRESIDING EXAMINER: How about that, Mr. Bilger? There was some evidence about activity at WLIV. Did he see him at WLIV?

MR. BILGER: Yes, I asked him if he saw him there. The answer was no.

MR. KENKEL: The whole thing is both with respect to the letters testified to, the questions on direct about his association with Mr. Crowder, as a matter of fact the only question on direct was that he was a friend of Crowder. It goes into the entire relationship. Plus as you know there is this other pending question. While the witness is on cross-examination I think I am entitled to go into that.

[Tr. 1389]

PRESIDING EXAMINER: He is not a principal, remember. If he were a principal it would be a different story. Then we might be able to go beyond the scope of the direct because it would be cross-examination in any event and there would not be any question of order of proof. But Mr. Scarborough is not a principal. I don't see how the general state of Mr. Crowder's health at WHBT ties in with his activity at WLIV. I think I must sustain the objection.

BY MR. KENKEL:

Q. The first six months of 1956, can you fix the date, sir, at WHBT Mr. Crowder was in and out of the station with frequency, was he not? A. Yes.

Q. When I say in and out I mean you being his commercial manager and he finding out what was going on in the station, what you were doing, what the other employees were doing, that sort of thing in participating in the management and operation of the station, wasn't he? A. Yes.

MR. LETTERMAN: I think he was about to add something.

THE WITNESS: I think that answer would have to be qualified.

PRESIDING EXAMINER: All right. Will you qualify it to whatever extent you feel is necessary to answer correctly.

THE WITNESS: During that time, as I recall, he had other

[Tr. 1390]

business interests. He didn't spend as much time at the Station during a period of about a year or year and a half there as he did when I first went there. As to whether it was his health or not, I can't answer that question.

BY MR. KENKEL:

Q. You say as to whether it was his health or not, he never complained to you about having bad health, did he? A. He never complained, no, sir.

Q. As far as you know he was in good health?

MR. BILGER: I object to that.

PRESIDING EXAMINER: Yes. The objection must be sustained if that is going to be the basis for a requested finding that Mr. Crowder was in good health, because Mr. Scarborough didn't know that he was in bad health, Mr. Scarborough is not a physician. You may ask him about the outward characteristics and things like that, but not a conclusional statement.

BY MR. KENKEL:

Q. Mr. Scarborough, you told us that Mr. Crowder got a letter from his attorney in Washington concerning the program letters or you gave that as one of the circumstances leading up to these letters from Black, Harmon and the others to which you testified? A. That is what he told me, yes.

Q. Did you see the letter from the attorney? A. Yes, sir.

[Tr. 1736]

C. R. BLACK

* * *

DIRECT EXAMINATION

BY MR. KENKEL:

* * *

[Tr. 1739]

Q. In that connection—or in connection with that letter, "that letter" is this October 13, 1961 letter, did you have any conversations with Mr. Crowder? A. No, I never talked to Mr. Crowder in regard to any radio station. I don't believe we ever talked about the radio station at any time.

MR. KENKEL: That is all.

PRESIDING EXAMINER: Mr. Bilger?

Mr. Bilger represents WXXL and he will cross examine you now.

THE WITNESS: Yes, sir.

MR. KENKEL: One further matter, if I may.

PRESIDING EXAMINER: Certainly.

BY MR. KENKEL:

Q. Professor Black, you are appearing here under a subpoena? A. Yes, sir.

CROSS-EXAMINATION

BY MR. BILGER:

Q. Would you be able to state whether the letter of October 13, 1961 was copied word for word from the draft? A. Yes, sir, she copied it word for word from the draft, I feel sure. I handed it to her and asked her to copy it.

Q. When the letter was brought to you from Mr.

Scarborough, was it on letterhead paper or just plain paper? A. I think it was on plain paper.

Q. Mr. Black, I show you again the file shown to you by Mr. Kenkel and refer you to a copy of a letter dated November 30, 1962 directed to the secretary of the Federal Communications System in which at the bottom is your name typed C. R. Black, Superintendent of Harriman Schools. Did you sign that letter, the original? A. It appears here that I did. However, I stated definitely I dictated the letter.

Q. Did you dictate this letter and the November letter yourself, sir? A. Yes, sir.

Q. Were you approached by anyone to dictate such a letter? A. I don't know that I was approached by anyone that told me to write this letter, but the reason I wrote the second letter was that our board, one member of our board and maybe some others, I am not sure, criticized me for writing that letter on the Harriman City School stationery. For that main reason I wanted to correct it because the Harriman Board of Education never discussed this because I never wrote the letter Mr. Scarborough gave me. That was the main reason for me retracting that. I felt I had erred in putting the letter on school stationery.

[Tr. 1741]

PRESIDING EXAMINER: Was there anything in the letter, Professor Black, with which you did not personally agree when you handed it to your secretary to have typed on the letterhead of the school district?

THE WITNESS: I read it hurriedly and I didn't take time to think the thing through. The thing that bothered me most was that I was in a hurry, I was rather busy so I just handed the letter to the secretary—I am sure I read it but as far as considering what was in it, I didn't take time to do that.

BY MR. BILGER:

Q. Is there anything in the October 13 letter that you disagree with as far as content? A. That was the first letter?

Q. Yes, sir. I will show it to you if you like. A. I believe I have it in mind.

There were some people that stated to me—

Q. I don't want to interrupt unduly but my question specifically was, is there anything in the October 13, 1961 letter with which you disagreed when you signed it or today? A. I disagree with the tenor of the letter. It sounds as though it was criticizing the WHBT station. It sounded as through it was not doing the job and we ought to have another station. As far as having another station, I could not judge that.

Q. Other than your feeling that this letter of October 13

[Tr. 1742]

could be interpreted as being critical of WHBT, is there anything else? A. Well, it seemed maybe I was saying now we need another radio station and I couldn't be a very good judge as to whether another station would be feasible or not.

Q. Let me go to another question where you were asked if somebody else contacted you. Somebody must have contacted you. Who was that? A. Mr. Hamilton.

Q. Sonny Hamilton? He is referred to as Sonny Hamilton? A. Yes, sir. He did talk to me and some other people.

Q. I am showing you a copy of your October 13, 1961 letter, Mr. Black? A. Yes.

Q. Do you disagree with the statement you made in the first paragraph, "We believe this would be a great help to your educational activities in Harriman." Do you disagree with that statement? A. At the time I wrote that, no, I couldn't disagree with it. In his program he stated that it would be a good thing for Harriman to have another station. The main thing was the feasibility of the station, would it be good for the school system.

Q. Does that complete your answer? A. Yes, sir.

[Tr. 1743]

Q. You don't feel any different today than when you wrote it, that it would be good, a second station might be helpful to the school system? A. I don't know whether it would be helpful. So many things have come in in regard to that station.

Q. You are retired? A. Yes.

Q. I refer to the second paragraph on the October 13, 1961 letter, "We believe the public should know more about what is actually happening in our educational systems today and the changes seen from day to day."

You don't disagree with that, do you? A. Only to the extent it seems to criticize the other station: "They are not doing the job, so let us get another."

Q. But as it stands, without being critical of WHBT, you don't disagree with it, do you? In other words, you still believe, don't you, Mr. Black, that the public ought to know more about the day to day operations and what is happening in our school systems? A. I think they should, yes, sir, but I wouldn't want this to come from me to say that the other station is not doing all it can.

Q. My questions are making the assumption from here on out, because we know now you don't want this to appear critical of WHBT, assume we all understand that; all right?

[Tr. 1744]

A. Yes, sir.

Q. I refer you now to the third paragraph of the October 13, 1961 letter, "Broadcast time would serve this purpose for reaching the greatest number of persons and naturally the more opportunities we have to reach the people will enhance the efforts. In addition to the dissemination of this information the actual training of the students in the various phases of research and program material will be most valuable."

Do you still agree that is a correct statement today, Mr. Black? A. I think it is a correct statement in that the more publicity the school can get, that is if it is good publicity, it is best for the school.

Q. Does that complete your answer? A. Yes, sir.

Q. You were in Harriman at the time Mr. Crowder owned WHBT? A. Yes, sir.

Q. At that time did Mr. Crowder cooperate with the school system? A. Yes, sir.

Q. In the fourth paragraph down of the October 13, 1961 letter, "I have found in past experience that you are willing to cooperate with the school system in its various

[Tr. 1745]

activities. I believe this will be of great benefit to the people of this area if you are successful in getting a new broadcast facility."

You were referring to Mr. Crowder's prior activities when he owned WHBT? A. That is what I had in mind, the fine way WHBT served the schools up until the time he left there and it had continued to do so. I wouldn't want that to be—

Q. Be critical of WHBT and Mr. Crowder? A. Yes. I would rather not give inference that I was wanting to put in another station. I wasn't capable of passing on that judgment.

Q. So other than just to be sure that I understand you, the reason you submitted your second letter to the secretary of the Federal Communications Commission was two-fold. One, it was on the letterhead of the schools, which you did not think appropriate and, secondly, you did not want to be in a position of criticizing Folkways broadcasting operation of WHBT? A. Yes, sir.

Q. There was no other reason for submitting a retraction? A. Another thing was that I didn't give the first letter enough consideration that I maybe should have given his copy of the letter he gave to me. I should have given more

[Tr. 1746]

consideration or more thought to it before I wrote the letter.

MR. BILGER: That is all.

PRESIDING EXAMINER: Broadcast Bureau, Mr. Letterman?

BY MR. LETTERMAN:

Q. Mr. Black, when Mr. Scarborough brought the copy of the letter to you at your office for consideration, was it your understanding at that point in time that you were free to send a letter, or free not to send the letter as a matter of your own choice? A. When he gave me the first letter?

Q. Yes, sir. A. I felt I was free to not send it or send it.

Q. You did send it and I take it you sent it as a matter of your own free choice? A. Yes, a personal letter. No action of the board or anything came in on that. It was just my personal letter, and I made a hurried decision to write the letter.

Q. The fact you are now saying it was a hurried decision is based on your belief there might be an inference of something you said in your letter that might be detrimental to the operation of the station by Folkways, is it not? A. Yes, sir.

Q. That may not be gleaned by people. If I read it, I might not glean that from the letter. The statements, aside from that point, the way Mr. Bilger read them, are

ORAL ARGUMENT

[Tr. 1797]

PROCEEDINGS

THE CHAIRMAN: The Commission will hear oral argument in Docket No. 17255, concerning the application of F. L. Crowder, trading as Harriman Broadcasting Company for a construction permit for a new standard broadcast station in Harriman, Tennessee.

Following a grant of the application without hearing on January 12, 1966, the United States Court of Appeals for the District of Columbia Circuit on January 5, 1967, reversed the case and directed that a hearing be held on trafficking and economic—that is, Carroll—issues.

Pursuant to the Court's mandate, the Commission designated the application for hearing on such issues and provided for an expedited hearing.

After certification of the record to the Commission, the record was remanded to the Hearing Examiner for the preparation of an initial decision setting forth his findings and conclusions solely on the trafficking issue—Issue 1.

On July 3, 1967, Hearing Examiner Herbert Sharfman released his Initial Decision in which he concluded that the applicant, F. L. Crowder, has not engaged in trafficking in broadcast authorizations. Exceptions to the Initial Decision have been filed by Folkways Broadcasting Company, Inc., licensee of Station WHBT, Harriman, Tennessee, and by the Broadcast Bureau.

[Tr. 1798]

The Commission also has before it the proposed findings of fact and conclusions of law with respect to the remaining issues in this proceeding filed by F. L. Crowder, trading as Harriman Broadcasting Company, Folkways Broadcasting Company, Inc., and by the

Chief, Broadcast Bureau. There are also pending before the Commission a petition for reconsideration of the Commission's May 16, 1967, Order directing the Examiner to certify the record to the Commission for final decision, filed June 15, 1967, by Folkways; and a petition for an order in the nature of enlargement of issues, filed June 12, 1967, by Folkways. The parties may direct their arguments to all these matters, including the pending petitions.

We shall hear oral argument first from Folkways Broadcasting Company; second from the Broadcast Bureau; and, third, from the applicant, F. L. Crowder. Counsel for each party will be allowed twenty minutes for the presentation of argument. If counsel for Folkways Broadcasting Company or for the Broadcast Bureau wishes to reserve part of his time for rebuttal, he should so state at the opening of his argument, and the timekeeper will flash a blue light indicating when rebuttal time begins. Otherwise, the blue light will indicate that five minutes remain. A red light will signify that the time for oral argument has expired.

May I have the appearances of counsel?

For Folkways Broadcasting Company, Incorporated?

[Tr. 1799]

MR. KENKEL: John B. Kenkel, of Miller and Schroeder.

THE CHAIRMAN: Broadcast Bureau?

MR. LETTERMAN: John B. Letterman.

THE CHAIRMAN: F. L. Crowder?

MR. BILGER: Donald E. Bilger, Smith and Pepper.

THE CHAIRMAN: We will proceed with the argument.

ARGUMENT ON BEHALF OF FOLKWAYS BROADCASTING COMPANY, INC.

by

JOHN B. KENKEL

MR. KENKEL: Mr. Bilger, Mr. Letterman, may it please the Commission: I would like to reserve five minutes of my time for rebuttal.

THE CHAIRMAN: You will get a blue light at that time.

MR. KENKEL: Thank you, sir.

This case, as you know, involves the application of F. L. Crowder for a construction permit for a new station in Harriman, Tennessee.

Now, as the Chairman summarzied the preceding portion of this proceeding, there was an initial grant without a hearing made by this Commission in January of 1966. During the time the case was on appeal, Mr. Crowder obtained program test authority from this Commission. He went on the air in August of 1966, and he has been operating since.

Apart from today's argument—and I am saying this parenthetically, because I will come to it later, but it is

not part of the merits of today's argument—you did permit him to stay on the air pending this evidentiary hearing, even though the Court of Appeals indicated that there was no legal basis for such operation. I mention that because a part of the evidence taken during the proceeding below concerned the eight months of operation of Mr. Crowder's station, which is WXXL.

The application before you was planted, if you will, in Mr. Crowder's philosophy, as testified to on the record below by Mr. Burn of obtaining a Commission authorization, building up the volume of business in any way it can be done, so as to make it attractive to a possible station purchaser, and then selling the station at a profit.

When this matter went to the Court of Appeals following your earlier grant, without a hearing, the Court said there may be some way to resolve Mr. Crowder's inconsistent representations in a manner which prevents his disqualification, but you have to have a hearing.

Well, you have had the hearing, and we submit that there is no way to prevent you finding Mr. Crowder disqualified.

I am going to point out two or three things this afternoon, because the time is brief. Quite obviously, I can't go over all of the evidence of record. I think we have distilled it in our proposed findings of fact which we have previously submitted to the Commission, and also in the exceptions we have filed to the Examiner's partial Initial Decision.

[Tr. 1801]

But let us look at the case this way: First, on what basis did you make your initial grant without a hearing? And then, what did the record just made show?

I think we will come to this conclusion, and I respectfully submit that you will individually and collectively come to the conclusion that your first grant without a hearing, which was made, by the way, over the dissent of two Commissioners, Commissioner Bartley and Commissioner Cox, was extracted from you by the misrepresentations, concealments, and equivocations of applicant Crowder. Is this so? Yes.

First, as you know, because you have issued orders from time to time during the expedited aspect of this proceeding, a critical portion or a critical is Crowder's claim that he became so ill in 1956 that he was forced—and these are his own words—he was literally forced to leave the broadcasting business. He represented that to you twice in the pre-January, 1966, grant pleadings, both times under oath. He told you that he was forced to leave the broadcasting business because of such ill health, and, secondly, that it was required because a doctor had told him he had to because of his health.

The Commission relied upon that in the Court of Appeals. And I am quoting now from the Commission's own brief in the Court of Appeals—well, I won't quote, but I will cite it to you—that you accepted that representation. You did in

[Tr. 1802]

your memorandum opinion and order of January, 1966, and the Commission's counsel in the Court of Appeals. There was nothing wrong, I will say that now, even though I have argued with the Commission in the Court of Appeals, both in having the initial grant reversed, and subsequently attempting to get Crowder off the air, after sitting through the evidentiary hearing below, and seeing the devious paths which the applicant will take in order to conceal his true goal; I can understand how the Commission was misled into making the initial grant.

What have we here involved? Mr. Crowder came to Harriman sometime in the late thirties or early forties. We don't know now, because the record is a little obscure on this point, and the Examiner resolved the question of thirty-five years in Harriman for Mr. Crowder.

But in any event, he became an employee and had a minority interest in Station WHBT at Harriman, then operating on 1230 kc, when the station was first authorized by the Commission in 1946.

In 1950, he told the Commission that Station WHBT was losing money, and the other people wanted to get out, and he bought all—he had eight percent interest, and he bought the remaining interest for $20,000, if I recall the figures.

In 1954, in June of 1954, he filed an application with the Commission for a construction permit for a new station in

[Tr. 1803]

Sweetwater, Texas. This is Station WDEH.

THE CHAIRMAN: Texas?

MR. KENKEL: Tennessee. Thank you, Your Honor. Tennessee. I just keep thinking Sweetwater should be in Texas, but in this case, it is Tennessee.

This was in June of 1954. Now there are several facts in here which become very critical with respect to the trafficking intent, so let me just mention them.

In 1953, with respect to WHBT in Harriman, he had obtained an FM construction permit. He turned that construction permit in in December of 1954. When we asked him on the record why he turned in the FM construction permit, he said there was a fire at the transmitter, which messed it up, and so he turned in the FM authorization, but if you look at your files, and this was one of the official notice material items that the Broadcast Bureau supplied, if you look at your files, you will find that a fire had to have occurred prior to March of 1954, so even if there was a fire with respect to the FM, there was no problem with the station staying on the air until December of 1954.

In the meantime, he had gotten a construction permit for Sweetwater. He changed the mode of operation from a corporation to himself as an individual, telling us on this record simply that it was done for tax purposes, but if you will follow, I think you will see that the tax purpose was an idea

[Tr. 1804]

he had at that time, his intention at that time, of obtaining WDEH, of selling the station at a profit, because he put the station on the air in February, and less than four months later, June, 1955, he signed a listing contract for that station, as well as for WHBT in Harriman.

Now you will say, "Well, what is wrong with that? People are buying and selling stations all the time, they are getting in and getting out."

This is what is wrong. When you asked him, and when the question was raised, "Why did you do it?" he said, "In 1956, I became so ill that I had to sell the station."

Now, the time that he made this representation, it was in response to an allegation or a charge, if you will, raised in Folkways petition to deny, concerning the concurrent 1956 sales of WDEH, WHBT, and the acquisition of a fifty percent ownership interest and a general manager partnership interest in WLIV in Livingston. So he was relating everything to 1956. He permitted that representation to be the very basis of your January, 1966, grant without a hearing. If you will reread that memorandum opinion and order, you will see that you bought that explanation. That is the very argument the Commission and Crowder made to the Court of Appeals. That is the very position he left unchanged when he first testified on this record below, just about a month ago. It was shown in this afterwards concerning the—for the 1956 sales.

[Tr. 1805]

In the hearing, we had the subpoena process, which we did not have before, during the prehearing pleading stage. Folkways subpoenaed the records of the media broker, and for the first time, we find that he had actually reached a decision to sell Station WDEH and Station WHBT in June of 1955, when he had sold, when he signed the listing contracts.

So all the reasons he had given to the Commission before, with respect to a claim of "I am not trafficking because I was sick in 1956, and had to sell in 1956," went out the window.

Well, this didn't stop Mr. Crowder, at least on the record. What did he do? He thence comes up with the excuse that he had to sell

WDEH because the station was going down, down, down financially, because of manager problems.

Now, if the station had been on the air for a long period of time, or even a year or more, and had problems, I think we would have some question about trafficking. But don't forget, by that time, Mr. Crowder was an experienced broadcaster, and as an experienced broadcaster, quite obviously, he knew that the first two or three months of operation of a station aren't indicative of how it is going to do. Quite obviously, he knew that the station would have its rough time in the first two or three months, so the fact that the station was losing money in the first two or three months cannot supply an excuse for the sale. It could, perhaps—and I

[Tr. 1806]

will concede this—had he told the Commission, when he sold WDEH, or even when he explained it to you later, when the question was raised during the pleading proceeding and the Court proceedings which preceded this case; had he told you that, I don't think there would be a problem. But the fact that he keeps repeating a 1956 illness which was nonexistent except in his testimony indicates, I think, that the trafficking intent was there, because we have not only that demonstration of the intent, but we have the statement of the witness, Mr. Burn, with respect to his—or as he testified, he had these conversations with Mr. Crowder, and Mr. Crowder expressed to him his philosophy of broadcasting: obtain a license, build up the volume of business in any way you can, and then sell it at a profit.

There are two or three other items I would like to mention, and it seems more than passing strange, we submit, that in every representation made in every application made by Mr. Crowder, there are these misrepresentations and concealments. Take the matter—and I concede that standing alone, it may not be too critical—the ownership of his billiard parlor.

Now, in various ways, in various applications, he has represented to the Commission over the years that he has a hundred percent ownership of the billiard parlor in Harriman. As it turns out, he does not. In 1958, he sold an interest in that billiard parlor, and since then, the ownership of the billiard parlor has been in partnership with himself and another individual identified on the record.

Now, when queried about these various items, Mr. Crowder said, "Oh, it was a mistake," but how can it be a mistake when that representation is portrayed in different ways? For example, in one application, he said, "F. L. Crowder, Harriman billiard parlor, 100 percent ownership since 1948." In another application, he puts it, "F. L. Crowder 100 percent owner since 1944," and that sort of thing.

These, again, you relied on. Your memorandum opinion and order of January 14, 1966, said that he had an ownership of a business in Harriman, and he let you believe that based on his previous representations to the Commission, he let the Commission argue that to the Court of Appeals, and he himself argued that to the Court of Appeals, in claiming a nexus to and knowledge of the Harriman community.

Take the matter of the community programming survey, which was raised. Now, the Examiner's initial decision, I think, in this area, contains the one indication of complete valuelessness to this Commission, because the Examiner says, and I am not quoting, but paraphrasing–and I don't think unfairly–"I don't care what kind of a survey was made, I don't care if it was a complete sham; it is not going to bother me, and I am not going to consider it under the

[Tr. 1808]

trafficking question.

THE CHAIRMAN: I think he found it was not relevant, didn't he?

MR. KENKEL: Yes, and that is where his missed the point, because one of the questions here is, What is trafficking? Is a person applying for a station to obtain an authorization to operate in the public interest? That is, to supply some programming to meet the needs and desires of the community, or is he only after the authorization so that he can subsequently sell it later at a profit?

Well, don't you think that one element–now, surely, not all, but one element of that is what did he do to ascertain the needs and desires? How did he prepare his application, in other words? Did he simply put in an application for a frequency and hope to get it, and subsequently sell it, or did he really make some attempt to find out what the community needed? This is the point of relevancy, we submit, that there was with respect to the programming survey.

Another aspect of it is, I think Crowder himself recognized the relevancy, the more than relevancy, the very real requirement of a programming survey, because he amended his application with a specific representation to the Commission, "We are submitting herewith evidence of our efforts in ascertaining the community needs and desires," and what were they? These were confected letters. In the first

[Tr. 1809]

time around, when the issue was raised in the pleading battle, the Commission accepted Mr. Crowder's explanation, and the critical one was this: that in every instance, Crowder's agent, Scarbrough, who obtained the letters, didn't see the final effort, and that they had been submitted directly from the contactee to Crowder, and from that, you assume that even though Scarbrough may have had a little chat with some of these people, and said, "Look, let's put this in the letter," or "Let's put that in," the ultimate letter that the community leader wrote, addressed to F. L. Crowder, and submitted by Crowder to you under his oath probably contained the contactee's ideas, and if there is any doubt on that, I would refer you to the Commission's brief in the Court of Appeals, where at page 31, the Commission in explaining why it affirmed, made the grant, said "The final letter was then sent by mail by the party contacted directly to Mr. Crowder, without first being seen by Scarbrough," and what does the evidence in this record finally show? That certainly isn't. Scarbrough picked them up and either mailed them or gave them directly to Crowder, and Crowder knew that, he knew that when he submitted the sworn statements that he had gotten them by mail directly from the contactee.

The record, as summarized in our proposed findings and exceptions, I think, adequately demonstrates that there is not one representation that you can accept without question by Mr.

[Tr. 1810]

Crowder. That plus the demonstration of the intent for trafficking and the indications of trafficking, both with respect to WDEH and now even the instant application for Harriman, require the conclusion, we submit, that Mr. Crowder is not qualified to have the license he seeks.

I will reserve the balance of my time, if I may.

THE CHAIRMAN: Mr. Letterman.

ARGUMENT ON BEHALF OF CHIEF OF BROADCAST BUREAU

by

JOHN B. LETTERMAN

MR. LETTERMAN: Mr. Chairman, members of the Commission: May it please the Commission, the Broadcast Bureau would like to reserve five minutes of its time, if we may.

The exceptions of the Broadcast Bureau are directed essentially to the failure of the initial decision to consider and give due weight to substantial evidence in this record, and failure to make findings based on this evidence, and, further, to make the conclusions which we believe are warranted by the evidence.

Now, time will not permit a full argument on every point involved in the case, and, therefore, the Bureau will rely essentially on what it said in its proposed findings of fact with reference to the Carroll inquiry, also with reference to the pleadings that are pending before the Commission, and the Broadcast Bureau would rely on the position taken in its

[Tr. 1811]

various responses to those pleadings, but with respect to the trafficking issue, we do believe there are two basic questions which are most important to the Commission to consider in connection with this decision.

Those questions, phrased simply: first of all, did Burn truthfully and accurately relate the conversations he alleges he had with Mr. Crowder? And, secondly, if he did, do these conversations, taken in connection with the conduct of Crowder with respect to the sale of Stations WDEH and WHBT, amount to trafficking as a matter of law? Do these two transactions, taken in light of the testimony of Burn, if accepted to be true, amount to trafficking as a matter of law?

We first turn to the question of credibility. In this connection, we have four parts to our argument. The first part relates to the three conversations that Burn is alleged to have had with Crowder, which Crowder denies ever took place. Burn testified that he has known Crowder for approximately fifteen years, that about 1952, prior to that time, he knew him socially, but in about 1952, he instituted negotiations looking toward bringing a remote studio to Rockwood, his home town, his town, where he lived and had his business, and in this connection, he discussed, talked with Crowder about bringing studios of WHBT to Rockwood to be established in Burns' bank building.

According to Burn, these negotiations were successful,

[Tr. 1812]

and, as a matter of fact, the studios were in fact built. Further, according to Burn, that the actual construction of the studio was supervised by Crowder. That Crowder gave instructions as to what was needed, Crowder was present at the bank during the course of the constructions, and on these occasions, he saw and talked with Crowder. After that, he said, he kept in contact with him socially.

Crowder denies all of these things occurred. He says they simply didn't happen. He says that, "I met the man, and spoke with him twice, in my entire lifetime. That is, at the time I signed the lease for his studios, and, secondly, at the time the bank, Burns' bank, purchased my deferred purchase money note from me in May of 1961."

The second conversation that Burns related for the record occurred in about 1956, or early 1957. As he said, it became known that some financial interests from McMinnville, Tennessee, were looking to build a station in Rockwood. He said he met Crowder and told him that he was concerned about another station coming into Roane County, because of his belief that Roane County would not support more than one broadcast facility. He said that Crowder told him at that point in time that he was not concerned with the competition that could be expected from the Rockwood station, that he had learned the hard way that you could not make money on radio stations through operation. You made money on radio stations by getting a

[Tr. 1813]

license, building up a good volume of business through a subsidy, and then selling them.

Still according to Burn, on this occasion, Crowder told him that he didn't propose to operate a station anyway, until the time he could sell it. Crowder denies that this conversation occurred.

The third conversation of the several that took place between Burn and Crowder concerned the institution or the application by Crowder for the facility in Harriman. It will be recalled that it was Crowder that owned WHBT at Harriman, Tennessee, prior to the time he sold it, to Folkways Broadcasting Company. Now, during the course of the conversations between Burn and Crowder, Burn explained that Crowder had told him that his philosophy in broadcasting was to go into virgin territory to establish—he used the words "virgin territory"—to establish a station in a community that had no station or in a county that had no station, and to build it up, and to go forward with it without competition from other stations. Now, this was in conflict with Crowder applying for the station again at Harriman, because WHBT was already in operation there.

So Burn asked him for an explanation, and, according to Burn, Crowder explained that the management of WHBT was incompetent; that they had undertaken to operate a metropolitan station in a small town. They had changed the location of

[Tr. 1814]

a dial position of WHBT from about the middle to the far right, that they had increased power to 5000 watts, and that it was more expensive to operate a transmitter with 5000 watts as compared with the 250-watt transmitter operated by Crowder when he owned WHBT, and that management policies of this nature, in his opinion, would drive WHBT into the ground, and that he wanted to step in and fill the void, or pick up the chips, so to speak, when they fell.

Crowder again denied that this conversation took place. He professed to know very little about the technical aspects of station operation, and, for example, he said that he would not have known the significance of the changing of the dial position, that he would not have been able to state that it would have cost more or less to operate, how much more or how much less it would have cost to operate a station with 5000 watts as compared to 250 watts, and that he would not have been able to make the statements in general that had been attributed to him by Burn in this conversation.

The Bureau argues that the facts taken as a whole are consistent with what Burn testified to. For example, the WHBT studios were in fact built in Burn's bank building on the third floor of that bank building.

They were leased and in existence for a minimum period of three years. It seems reasonable that during this period of time, during the period of construction, Crowder would have

[Tr. 1815]

been to the studio to see the studios being constructed. It seems reasonable that Burn, being their chief sponsor, would have contacted Crowder in order to negotiate with Crowder to bring his facilities to Rockwood. All of these things are denied by Crowder. They didn't occur. "I saw the man and met with him only twice in my life, once when I signed the lease, twice when he purchased from me or his bank purchased from me in May of 1961 deferred purchase money note for WHBT."

It is also difficult to believe that Crowder would not have known the significance of the shifting of the position from 1230 on the dial to 1600; that after ten years' experience in broadcasting, he would not have had sufficient knowledge to know the significance of going from about a center position on the dial, where you would be picked up when you were dialing up and picked up when you were dialing down, or that he would not have known that you get relatively less coverage at 1600 as compared with 1230. It seems to me, to the Bureau, that he would have known this in 1961 when this conversation is alleged to have occurred, because it was at this time that he was filing on 970, with 500 watts power for the new Harriman facility, WXXL, and his engineering study at that time would have shown, it does show, that with 500 watts, he gets almost exactly as much coverage as WHBT does get on 1600 with 5000 watts. That he would have been without knowledge to have made the statement, we do not believe is credible.

[Tr. 1816]

Another matter which we believe should be taken into consideration has been alluded to by counsel for WHBT. We think it is important enough to stress once more. Now, Crowder first raised his claim that illness was the basic underlying cause, the true fact as to why he sold WDEH, and WHBT in the January 3rd, 1963, affidavit accompanying the January 8th, 1963, opposition to WHBT's petition to deny. WHBT then came back and said, "It is peculiar that this was so, in this case, because at the same time, you were applying for WLIV in Livingston, Tennessee, and in that application, you had represented that you were going to be the general manager of the station."

Crowder came back and said, "Well, the true facts about that are that I had a private understanding with my brother-in-law, McCoin, and this understanding was that the effect that I would have nothing to do with the station. I would not in any way participate in the operation," but Crowder says Mr. McCoin came back three times and finally induced him to go into the venture, to put up the $7,500, and become a fifty percent partner.

Now, this placed Crowder in the position, once he said, alleged that ill health was the reason that he had to get out of broadcasting in 1956, placed him in the position of having to explain to the Commission in response to the Commission's inquiry of December 18, 1965, why it was that he had said that

[Tr. 1817]

it was ill health when he was going into the WLIV application. We submit the Commission probably would not have had the explanation that he gave on this record had it not been for the questioning in connection with the December 18, 1965, letter. But this placed Crowder in another bad position, so to speak, because when it came time for the hearing, in the meantime, WHBT had subpoenaed the records of Blackburn and Hamilton, and it had discovered that Crowder had listed WHBT and WDEH for sale in June of 1955.

Now, this was not 1956, so Crowder's allegation that he had become ill in 1956 was inconsistent with the discovered document that it had been listed for sale in 1955.

It was incumbent upon him then to come up with another explanation. This explanation was that in 1955, in February, when WDEH first went on the air, he had a manager by the name of Lee, and that Lee was there for about four weeks, when he found that the business of the station started to go down, and he didn't understand it. He looked into the matter to see what the cause was, found that Mr. Lee had become interested in his secretary, and, therefore, he was paying more attention to her than to the operation of the station. But Mr. Foster, he said, after the initial period of four weeks, which would bring it to about April of 1955, took his place, but he had trouble with Mr. Foster, because Mr. Foster took issue with the local political party, took sides opposed to them, and the

[Tr. 1818]

business of the station, after about three months, started to go down, down, down, and that he just became a nervous wreck as a result of this, and, therefore, he decided to sell the station, really not in '56 but back in 1955.

This placed a further problem in the hands of Mr. Crowder, because it was established that Mr. Foster did not leave the station until a year later in 1956, and he was asked to explain well, if Mr. Foster caused you all these problems, he was ruining the station, he had gotten involved in local politics, and had caused the station to lose business, and business was going down, down, down, your health had become so that you were a nervous wreck, and it had forced you out of business, how was it, sir, that you kept Mr. Foster on as the manager?

His explanation was, "I had an oral contract with him, and that contract called for him to stay for a period of a year."

The Bureau submits that it seems more likely that if Foster had actually caused his problems, that there was a sickness, back in 1955, as he now claims, that he would have let Foster go just as he had let Lee go. He let Lee go after four weeks; why would he have kept Foster on?

We submit there is no substantial answer for this in the record in this proceeding. We think that he got struck by giving an explanation in a pleading that it was ill health. That confronted him with the conflict between his representa-

[Tr. 1819]

tion in his application of WLIV that he was general manager, and then after having said that this call occurred in 1956, he had to further reconcile it by the type of evidence which he gave in the hearing.

Lastly, we would turn to the fact that none of these problems existed at WHBT, the sister station which was sold. There Scarbrough said that Crowder was present for a year and a half. Scarbrough was his friend. He was an employee of his. He had been an employee of his for a long period of time. In this framework, he was asked, "Did you know about Scarbrough being ill? Did you see any outward indication of this?"

COMMISSIONER COX: Mr. Crowder?

MR. LETTERMAN: I am sorry. Mr. Crowder was ill. Mr. Scarbrough replied, "No, I did not." None of the problems of his illness was associated with WHBT. Scarbrough noticed nothing about Crowder's outward conduct that indicated illness. So all matters taken into consideration, all things taken into consideration, it was the Bureau's view, these required a resolution of the question of credibility in favor of Burn testimony.

Now we say the question of law that is presented is that if you find that Burn, through his testimony, supplied the essential element of intent necessary for decision in trafficking in this case, and we believe that it did, that if

[Tr. 1820]

you find that it did, then the Bureau takes the position that in accordance with the Court of Appeals decision in this very case, terminology that is referred to in its exceptions, that the Commission is bound to find that Crowder trafficked in this particular instance with respect to the two stations.

I will save whatever time I have.

ARGUMENT ON BEHALF OF
F. L. CROWDER
by
DONALD S. BILGER

MR. BILGER: Mr. Chairman, Commissioners: By way of preface, I might address my initial remarks to one or two comments made by counsel. I do not intend to take exceptions one by one, since Folkways has listed over a hundred of them, and I received them only Thursday. But I might suggest to you that the Broadcast Bureau is incorrect in citing the record to you, when Mr. Letterman indicated that Crowder's testimony indicated only two conversations over the course of this period we are talking about, and that only two occurred. I think the record will reflect that Mr. Crowder said that he had talked with Mr. Burn a third time, and that time was when both gentlemen met with the Governor of Tennessee and the senior Senator from Tennessee.

The record will so reflect.

With respect to argument by Folkways regarding a billiard parlor ownership—

[Tr. 1821]

COMMISSIONER COX: Was that in any connection with the station, Mr. Bilger?

MR. BILGER: Not, it was not, Commissioner Cox.

COMMISSIONER COX: The other two, though, one related to the lease for the studio, and the other related to the sale of the note which was the proceeds?

MR. BILGER: That is correct. In 1961. It is my contention, although I did not propose to argue it because the record will speak for itself, that Mr. Crowder's testimony with respect to these conversations was not intended to discuss the negotiations for the studio lease. These negotiations occurred three years before 1956, and in the framework of the questioning, wherein both counsel here examined Mr. Crowder, it was directed in context toward 1956 and subsequent years. I don't believe the record will show that Mr. Crowder ever denied having negotiated a lease with Mr. Burn, but as I say, I had not intended to get into that point.

One quick remark, now, about the billiard parlor situation. Very frankly, gentlemen, to me at least, as counsel for Mr. Crowder, this is trivia, and I won't spend much time upon it, but the fact is that Mr. Crowder did own a billiard parlor, and owns it today. He owned one hundred percent of the assets and the building in which it is located for four years. He sold—well, rather than do the mathematics, he still owns 66-2/3 of it, and he still owns the building.

[Tr. 1822]

Now, if this is ground for taking a man's franchise away from him on trafficking, I have no further comment about this.

I would like to place at this time the identity of these parties.

COMMISSIONER BARTLEY: How was it represented in the application?

MR. BILGER: I beg your pardon, sir?

COMMISSIONER BARTLEY: How was this partial ownership represented in the application?

MR. BILGER: It was never changed, from the time that Mr. Crowder represented to the Commission in the "other interests" section of the 301 in other applications, he listed himself correctly as owning one hundred percent.

The error was not corrected when he disposed of a minority interest in the assets. He still, as I said, owns 66-2/3, and he owns the building. When it was called to Mr. Crowder's attention, it is now corrected.

But my difficulty with that is how that would lend itself to an aura of trafficking, I find it difficult to conceive. It was a mistake, Commissioner Bartley, and Mr. Crowder said that it was.

COMMISSIONER BARTLEY: After it was disclosed in the hearing. Is that correct?

MR. BILGER: I believe that is correct. Among other applications—I don't know that this is an appropriate

[Tr. 1823]

remark. I might make it—I have represented clients for years before the Commission, and I am sure the Commission is well aware that you would suspect in a percentage of your applications there are these errors that creep in. They are inadvertent. In this case, I think it is not persuasive, at least to me.

COMMISSIONER BARTLEY: Well, was financial qualification any part of this hearing?

MR. BILGER: No, sir. No, sir, the hearing was designated on two issues, the so-called Carroll issue, and the trafficking issue.

COMMISSIONER BARTLEY: I am speaking of the application. Did it have any part to do with the financial qualifications? His ownership of any other business?

MR. BILGER: I have not examined the application in which this occurred originally, the hundred percent, but I would seriously doubt it. I would not make the representation to you, sir, that it did or did not. I would doubt it very much.

WHBT is the complaining licensee here. This is owned by Folkways. The Commission has franchised Folkways Broadcasting Company. This facility is in Harriman, Tennessee. It is a Class 3 station, operating on 1600 kilocycles, or kilohertz, I guess the appropriate term is now, with a power of five kilowatts. Harriman, Tennessee, has a population in excess of 10,000 people. This is the only broadcast station in

[Tr. 1824]

Harriman, Tennessee, of any nature.

WHBT has enjoyed a monopoly in Harriman, Tennessee, for twenty years, since its date of construction, in 1947.

The present licensee has had this facility for about eight years. The County of Roane has a population in excess of 41,000 people, which is the service area of WHBT. The only other broadcast station within that county is WRKH, in Rockwood. That facility has one kilowatt power. It seems perfectly patent to—

COMMISSIONER COX: What frequency do you recall?

MR. BILGER: The frequency is 580 kilocycles.

COMMISSIONER COX: A nice low one.

MR. BILGER: It is low. So WRKH has a monopoly with its own principal community, and it certainly would appear to be the dominant station in the county of 41,000 people. Should it prevail, or should it not prevail in this proceeding, the effect upon WHBT will have a competitor in Harriman and in Roane County. The existing station that Mr. Crowder has constructed is WXXL. It is 500 watts, daytime only, on 980, I believe it is. The evidence in this proceeding below on the Carroll issue, the Broadcast Bureau agrees with Mr. Crowder that Folkways failed to carry its burden, even showing economic injury to the station, much less connecting that economic injury to the public injury. So I think it is safe and fair to state that the only injury it would suffer, WHBT, would

[Tr. 1825]

be one of competition.

On the other hand, Mr. Crowder has constructed WXXL under Commission franchise, and has been operating in Harriman, Tennessee, since August 12, 1966, successfully to date resisting all efforts to remove it from the air, via one method or another. If Mr. Crowder should not prevail in this case, he will, of course, lose whatever investment he has placed into this radio station. It is highly doubtful if the Commission would ever permit him again to be a broadcast franchise holder, and certainly, his reputation would suffer.

Under these conditions, it would appear to me that the quantum of proof necessary to find him guilty of trafficking as Folkways has charged repeatedly must be high, and the Commission has so held recently.

COMMISSIONER BARTLEY: Where is the burden of proof in this case?

MR. BILGER: The burden of proof with respect to the Carroll issue was placed entirely upon Folkways. With respect to the trafficking issue, what I will call the burden of proceeding with the evidence was placed upon Folkways, the licensee, and the ultimate burden of proof was placed upon Mr. Crowder.

The case to which I referred for the record is Radio Station WTIF, 7 RR 2nd, 1965.

COMMISSIONER COX: 1965?

[Tr. 1826]

MR. BILGER: 1965.

Now I would like to go over with you now what Mr. Crowder has owned, the licenses he has held from the Commission, and what he has done with them, because over a period of 18 years, he has had three franchises, one of which he owned and operated for ten years, one of which he owned and operated for two years, and one of which he held his fifty percent interest in a nonactive capacity for eight years.

In 1947, Mr. Crowder owned 6 percent of a corporation which obtained a franchise to construct in Harriman, WHBT. It was so constructed and operated, until 1950, when Mr. Crowder bought out the other stockholders. He owned and operated that station until 1956.

Now there is not one jot or title in this record to indicate that that facility was operated in any other way except in the best interests of the public. Not one word, and yet that appears frequently in the Commission decisions as a necessary corollary to trafficking.

Furthermore—

COMMISSIONER COX: You mean that in order to establish trafficking, you would have to prove that the station was operated contrary to the public interest?

MR. BILGER: Well, they are almost chicken and egg. In order to establish trafficking, Commissioner Cox, one has to make a finding, I believe, that trafficking, that the station

[Tr. 1827]

involved or stations involved are operated not in the public interest, not to serve the public, but for the furtherance of private gain.

Now, it seems to me that there is a corollary there.

COMMISSIONER COX: Well, but to operate them or to obtain franchises for the purpose of selling them at a profit implies that the stations were operated in such a way as to command a price, and it would be quite consistent, would it not, with an intent to acquire a franchise to maximize its attractiveness to purchasers by serving the public interest, by attracting business, and then to sell, yet if the purpose in the whole process was to sell rather than to become a broadcaster, unforeseen circumstances aside, for the indefinite future, that would be trafficking, would it not?

MR. BILGER: I agree with this, but it is syllogistic reasoning. I don't think there is any doubt about that. But I maintain my original thought, that frequently, this is not the case. Programming suffers. This sort of thing. And this has been argued inferentially to you this afternoon by Folkways' counsel. He refers to what he calls a sham, I believe, of program survey. This sort of thing.

COMMISSIONER COX: Well, that is something aside from what is done on the air. That is an effort made to ascertain needs for purposes of the application.

MR. BILGER: Yes, it was, and the record also reflects,

[Tr. 1828]

and he spoke about it, I believe, that present WXXL programming along the lines that we are now discussing, so there has been some inference and innuendo, if not a direct allegation on that basis.

Now, when Mr. Crowder sold—well, I am going to refrain from that, because I was going to talk about price for a minute. I think it gets better a little later. He sold the facility in 1956.

In 1954, he obtained by Commission consent the authority to construct a station in Sweetwater, Tennessee. This facility is WDEH.

Now, Sweetwater, Tennessee, is some 43 road miles from Harriman, where Mr. Crowder has resided, lo, these many years, and wherein his then broadcast property, WHBT, existed. It was Mr. Crowder's only absentee-owned station. He was his own manager at WHBT. The record reflects that Mr. Crowder testified, and please mark you this: There is no evidence to the contrary. There is argument and there is inference, but none to the contrary, and there is corroborating evidence in the Commission's files to which I will refer.

He stated he did have trouble with two successive managers. The first became involved with a young lady employed as secretary, I believe, to the detriment of the station's business, and the second became embroiled in Sweetwater politics. These factors caused Mr. Crowder to decide to

[Tr. 1829]

relinquish the station, which he had owned either as a permittee or as a licensee for a period of approximately two years. This is back in the middle fifties, so he decided to sell both facilities. They were both placed on the market, and he disposed of both facilities.

COMMISSIONER COX: Why would trouble in one station lead to the sale of the other, in the absence of the ill health which was first stated as the ground for selling both? Ill health, of course, would account for both.

MR. BILGER: Well, ill health is the reason, but the ill health stemmed—let me approach it this way. The reason given to the Commission for the sale in the assignor's blanks, "Why do you wish to dispose of the station?" for both the Harriman station and the Sweetwater station were identical, that he wished to get out of the broadcasting business. Then when asked for an explanation of this, in light of what I am going to talk about in a moment, the WLIV station, and to which you have already heard, he stated that it was because of ill health. Nothing inconsistent. He is giving the motive, it seems to me, for wanting to retire from broadcasting.

Then in the course of the hearing, he was attacked, and vigorously, I might add, about this statement, and the reason for this, then, it became apparent, it was not listed before, because there was no need to list it. This employee situation had made him "a nervous wreck."

[Tr. 1830]

Now, there was no evidence at all that this was not so.

COMMISSIONER BARTLEY: Was he in the same physical condition in both places?

MR. BILGER: Well, his health belongs to him peculiarly, although he had stations in two areas. One he had held for ten years, and the other for two.

COMMISSIONER BARTLEY: Was it as apparent in one place as another to the people who knew him?

MR. BILGER: I don't believe there was any evidence at all about that except what you have been told by Mr. Kenkel regarding Scarbrough, who said he did not notice any difference in Mr. Crowder's health.

COMMISSIONER BARTLEY: Did you seek anyone from the other community to find out how his health appeared there?

MR. BILGER: We did not.

COMMISSIONER BARTLEY: In other words, you didn't seek to rebut that.

MR. BILGER: Well, there was not—I don't know that there was anything to rebut, or at least, not in my judgment.

COMMISSIONER BARTLEY: The question was, did you seek to?

MR. BILGER: We did not, no, sir.

COMMISSIONER COX: Is there any evidence as to his ill health other than Crowder's own statement?

MR. BILGER: Yes, sir, there is, and the Examiner has referred to it in his opinion, and I want to cite it.

[Tr. 1831]

THE CHAIRMAN: You have five minutes.

MR. BILGER: Yes, I know that is five.

Before the allegation of trafficking was leveled, before all this litigation arose in 1962, there was on file with the Commission in the assignee's portion of the 314 in regard to the sale of WDEH, this statement quoted by the Examiner on page 6 of his initial decision. Now, this was filed back in 1956, long before we heard of Mr. Crosthwait and his allegations of trafficking. "Mr. Crowder had an unfortunate experience during last year with two different managers. They were not completely honest in their business dealings, with the local people or Mr. Crowder. This had a very bad effect financially on WDEH."

COMMISSIONER COX: What is the date of that document?

MR. BILGER: That date would be—this is the assignee's statement pertaining to the sale of Radio Station WDEH, exactly what Mr. Crowder has indicated to the Commission.

Now this, of course, predates by five years any allegations here or any charge of doctoring evidence or shaping fanciful tales to comply. I personally see, and I urge it upon you, that there is nothing inconsistent between telling you that he wanted to get out of broadcasting, because he did. When asked for the motive behind that statement, he told you he was ill. No evidence to the contrary. Why was he ill? He had difficulty with the managers. Going back five years before the charge of trafficking arose, we find corroboration

[Tr. 1832]

in the files, your files.

Now, I would like to move now to the WLIV situation, if I may.

THE CHAIRMAN: Yes.

MR. BILGER: Because of the allegation the general manager represented to you in an application there, and this is inconsistent with his representation he wants to get out of broadcasting, and of course, it could be so interpreted, and, as a matter of fact, the Commission inquired of Mr. Crowder by way of a letter why this was so, and it was explained, and I guess in this context, this should be, I think, indicated to you, that in January of 1956, Mr. Crowder in an application, and his partner at that time, Mr. McCoin, his brother-in-law, now deceased, told you that he was planning to be general manager of WLIV, if and when you granted the 301, the application. And it was not until February of that year, in the one case, WHBT, and in April of that year, in the case of WDEH, that the applications to assign those licenses were filed.

In other words, he had said to you and pending in your file, "I am going to be general manager of WLIV." That is, looking at it standing alone, starkly, that is what it said. Mr. McCoin was going to be station manager, and then Folkways would have you believe that he came along, a few months later, knowing you had that, and said, "I want to get out of broadcasting and sell my WHBT in Harriman, and my WDEH." This,

[Tr. 1833]

standing alone, without more, is inconsistent. You asked about it, we explained it to you before you granted this application on the pleadings. The explanation has never changed, and this hearing bears it out, and I think Bureau counsel would agree with that, because he does not rely for trafficking on WLIV.

Mr. Crowder intended only to be the general manager in the context of assisting to put this station on the air, because his brother-in-law was a used-car dealer and not a broadcaster, and there is not one record in the Commission's files, not one application, that was signed by Mr. Crowder, not a renewal, not an annual financial report, not on an ownership report, after the initial application to construct this station.

In addition to that, Blackburn and Hamilton's own file, called by Mr. Kenkel on behalf of Folkways to establish the date of sale of the stations involved, indicates that there is not one document in that file signed by Mr. Crowder or addressed to him regarding Station WLIV, although there are to Mr. McCoin.

And the Blackburn-Hamilton files pertaining to WHBT when Crowder owned it and WDEH do contain correspondence from him there.

I wish I had some more time, but I don't. Thank you.

THE CHAIRMAN: If there is just one matter you can touch

[Tr. 1834]

on briefly, we will not be too—

MR. BILGER: There is, if I could have just a moment.

THE CHAIRMAN: All right, sir.

MR. BILGER: The other major matter, in my mind, is Mr. Burn's testimony. I want to very briefly summarize not what he said, but what he is, and to what he owns. Mr. Crowder testified that he was not a friend of Burn's, that Burn was not his banker, that they didn't go to the same church. They don't live in the same town. They don't belong to any clubs jointly. Mr. Burn, however, testified with some degree of memory about conversations going back in one case over a decade, and in another, over five years, but let me tell you what Mr. Burn did not remember. This is a banker, and his context is that he has known Mr. Crosthwait, the principal owner

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Now he comes in on a testimony basis, and this is what he did not remember. He did not remember how long this lease was, for the studio that he negotiated with Mr. Crowder, according to Folkways. He did not remember who was present at the time he purchased Mr. Crowder's note, that is, you have not been told about that. The findings are replete with it,

[Tr. 1835]

and I haven't got enough time to get into it, but he knew exactly when this was, and all this, but he didn't remember who was present.

He did not remember that he was, and is today, the second largest stockholder in WOVE, Inc., the licensee of WOVE in Welch, West Virginia, wherein the major stockholder of that is Mr. Kenneth J. Crosthwait, also the major stockholder of WHBT in Harriman.

He did not remember, Burn, that he was and is an officer in that company. Mr. Burn did not remember that he was and is a director of that company. Mr. Burn on cross-examination did not remember whether or not he had given the stock that he owned in this company to his son. He did not remember whether he had ever endorsed this stock to anybody.

And it was not until he was shown the Commission's ownership files that he finally agreed that from the very beginning, when WOVE was purchased by Crosthwait, that Burn was the second largest stockholder, he owned something in excess of 17 percent, that he is the secretary-treasurer, and always has been, and that he is a director.

Now he didn't remember either whether Mr. Crosthwait had instigated the purchase of the Crowder note or not. Mr. Crowder said that he did, and Mr. Crosthwait agreed that that was correct.

If you will indulge me just one more moment, please, sir,

there is one other factor about Mr. Burn that I want to tell you about. Mr. Burn testified to one degree or another upon the so-called Carroll issue. Mr. Burn is a banker. He insisted that the economy of Roane County was such that in his judgment, it would not support two radio stations. He did this, and he also testified that the only other station in the county, in Rockwood, was not financially successful. Now, he did this in spite of the fact that his bank admittedly–his admission–had a four hundred time growth factor as compared to the national average. In other words, the deposits rose four hundred times as fast as the national average. I beg your pardon. Four times as fast.

In other words, the growth picture of his own bank rose much faster than the national, and also Mr. Crosthwait testified that Mr. Holoway, owner of the Rockwood station, had told him that his business was good. Mr. Burn still insisted upon this.

In closing, I submit that Mr. Burn is a patent, biased third party in interest in this situation, and he admitted that his interest here as to what could affect this action is against the competition WXXL would bring, if WXXL was permitted to operate.

Thank you very much for the extra time.

COMMISSIONER COX: He is the present holder of a note which Mr. Crowder took from Mr. Crosthwait when he sold him

[Tr. 1837]

the station?

MR. BILGER: This note, sir, has been paid off in full, many years ago, but he is presently, his bank is the creditor of Folkways, still. They refinanced. His bank is committed to lend Folkways an additional $15,000 if this Commission permits them to build an FM station, which they would like to build in Harriman.

COMMISSIONER COX: You say that the note has been paid, but the purchase price has not been paid. Is that correct?

MR. BILGER: Well, what occurred is not so complex. WHBT refinanced twice. When the bank bought Crowder's note, and assumed, Folkways then began to pay the bank, that was paid out of Folkways' earnings. That $23,000 was paid off. Folkways then refinanced on two other occasions. There is about the same sum still due, but not the same $23,000 that Crowder had.

THE CHAIRMAN: Mr. Kenkel.

REBUTTAL ARGUMENT ON BEHALF OF FOLKWAYS BROADCASTING COMPANY, INC.

BY

JOHN B. KENKEL

MR. KENKEL: If the Commission pleases, I believe I have just two or three minutes, and I will offer two or three items, if I may.

THE CHAIRMAN: There are four minutes of record. If it requires five, we will hear you for that length of time.

[Tr. 1838]

MR. KENKEL: First, Commissioner Bartley raised the question as to whether there was a financial qualification issue involved, and I believe he raised it in connection with the ownership of the billiard parlor. Again, it is small, but it indicates the pattern. It is another indication of the pattern, Mr. Crowder's motive is to deceive. WHBT in its petition to deny had raised the question of the issue of financial qualification, and one of the reasons that you find him sufficiently qualified—I am reading now from your memorandum opinion and order—you indicated that the applicant has submitted that cash in the approximate amount of $30,000 is available, and that net current assets are in excess of $70,000.

Now, this included the billiard parlor. So that this was at least involved, and we say that there was a duty at this time. Certainly, if it had been errors made previously, in this specific application, one that you have here now, the one for Harriman, where he also represented that he was a 100 percent owner of the billiard parlor, there was a duty at that time to correct it, a study he avoided not only then but later, and including an FM application he filed in 1956, until the latter was brought up in hearing. Then we find the error.

Another item, Mr. Bilger read to you, from the Examiner's initial decision, in this so-called corroborating evidence found in the file, as you will see from our

[Tr. 1839]

exceptions, we point out that this matter was not adduced testimonially on the record, nor was Mr. Smith called as a witness by Mr. Crowder, but even if you accept this extra-record assertion, you will have to take a look at the second part, which Mr. Bilger didn't quote, and that is what Mr. Smith said in 1956, quote—"The first of this year, Mr. Crowder was fortunate in securing another new manager who has shown a very steady increase in business every month."

So if you are going to go outside the record and take what Mr. Smith said in July of 1956, you will find that Crowder's third explanation, or perhaps it is the fourth—frankly, he has made so many I have lost count—has been exploded by this.

In connection with WDEH, he had a contract for sale which eventuated from the 1955 listing, but that contract went by the boards. There was a second one made in July of 1956. So even assuming everything that he has said to date is correct, that he was disturbed by managerial problems in 1955, and for that reason, he wanted to sell the station, the contract which eventuated therefrom fell, and he went and made another contract in which the assignee agrees that there were no manager problems at that time, and WDEH was making money, so you have got these conflicting representations and, frankly, if ill health of such a magnitude existed that he was forced—and I am using Mr. Crowder's own words—that he was forced

[Tr. 1840]

to leave the broadcasting business entirely, if that existed, we might not have the trafficking question, even though the application here involved is a reentry by Mr. Crowder into the very community in which he left in 1956, at a substantial profit of some $61,000.

But if there was not this ill health, then you not only have a demonstration of the trafficking intent or further demonstration of the trafficking intent which is otherwise shown, but you have this further misrepresentation by Crowder, and in the two or three minutes there is the petition to enlarge issues, but since we cannot cover this, or didn't cover it, in any initial presentation, I won't now, but I will stand upon the pleadings.

I also stand with respect to the exceptions and the findings we have submitted on our documents filed, and I think that you will find first of all that this applicant before you is one that you simply cannot accept, that you cannot believe, and that apart from having to find therefore in favor of the other evidence of record, that you could not award him the license that he here seeks, because he simply disqualified—and there has been no showing by him who had the burden of persuasion under the trafficking issue, what he is doing with the WXXL operation, as the record shows, absolutely none of the local live programming that he proposed to you that he would carry has been carried.

[Tr. 1841]

Again, getting back to this discussion, I think, Commissioner Cox had with Mr. Bilger very briefly, there is another indication that if he had entered the market and were there for the purpose of providing a public service, he certainly would have shown you that, so not having shown you that, and we having shown through the cross-examination and the other evidence that there has been no implementation of any public service or any programming proposal, we come to the conclusion on the basis of all the record that he has trafficked, and that you cannot grant this application.

Thank you.

REBUTTAL ARGUMENT ON BEHALF OF THE CHIEF, BROADCAST BUREAU

by

JOHN B. LETTERMAN

MR. LETTERMAN: May it please the Commission, I want to touch upon about four points. The first point, in connection with my alleged representation to you that there were only two conversations or twice that they met and talked, that Crowder admitted to, this is correct. I stand by that. Crowder made it absolutely clear through my examination that he had met and talked with Mr. Burn on two occasions: first, when he signed the lease; second, when he purchased the note. He did mention that he saw Mr. Burn at a political rally on one occasion, but I did not understand his testimony that he discussed or talked with him at that point in time. He made it very, very

[Tr. 1842]

clear that all of the conversations that Burn testified to did not occur at all, did not take place at all, and that is the conflict that you have.

Secondly, I would like to make it clear to Commissioner Bartley, sir, when Crowder owned the hundred percent of the billiard parlor that was referred to, this was back prior to 1948. In 1948, he sold a one-third interest to Charles Derrick. The representations with respect to the hundred percent ownership commence in 1950, at the time he filed for a hundred percent interest in WHBT, so in 1950, he did not own the hundred percent interest, and this representation of his full ownership of this particular billiard parlor was carried through not one application, but every one that he filed straight through to this one.

Now, it is not a very significant point. We submit, it isn't, taken alone, by itself, but then again, when counsel for WXXL, for Crowder, says that these errors are inadvertent, you cannot find the error with respect to his representation that he was going to be the general manager of WLIV to be inadvertent. There is too much that goes before it. It was prior to the time he filed the WLIV application that he had this firm understanding with McCoin that he would not be active. And I asked Mr. Crowder on the record whether as a broadcaster of some experience, he did not understand what the Commission was asking in this part of the application form as

[Tr. 1843]

to its staffing plans of the station. His first answer, as I understood him, was, "Well, what I meant was, I was going to be general manager of the station before the station went on the air."

I followed back with a further question, because I did not understand this response to make sense. I said, "Before the station went on the air, isn't it a fair representation that this is a staffing plan of the station, after it goes on the air, and that you were representing to the Commission that you would be general manager of the station after the station went on the air?"

And he admitted that he recognized that this was it, that it was just an error.

I also would like to call your attention to the fact that with respect to WDEH, it went on the air in February of 1955. The application for renewal of license was filed in April of 1955, due to the fact that renewals in Tennessee were coming up, and the station was listed for sale only about three months thereafter, in June of 1955, and I refer the Commission to its own report and order, procedures on transfer and assignment applications at 689, page 689 of 32 FCC, where it states that "In the absence of a showing of such circumstances, however, we believe that the transfer or assignment of a broadcast license held for a short time in prima facie inconsistent with the duty of the licensees in the public

[Tr. 1844]

interest."

It goes on to explain that where you have a license or an authorization held for a relatively short period of time, it becomes incumbent that—

THE CHAIRMAN: You certainly may finish the sentence.

MR. LETTERMAN: That under those circumstances, the Commission will scrutinize the transaction very carefully.

Thank you very much, sir.

THE CHAIRMAN: We will take the matter under advisement.

(Whereupon, at 3:38 p.m., the argument was concluded.)

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BRIEF FOR APPELLANT

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,222

F. L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor.

APPEAL FROM DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 2 1967

Nathan J. Paulson
CLERK

DONALD E. BILGER
1101 - 17th Street, N. W.
Washington, D. C. 20036
Counsel for Appellant

Of Counsel:
Smith, Pepper, Shack & L'Heureux

Washington, D. C. · THIEL PRESS · 202 · 393-0828

QUESTION PRESENTED

In the appellant's view,* the following question is presented:

Whether it was error or otherwise plainly improper for the appellee to find an intention to engage in trafficking upon the part of the appellant and consummation of such an intention in (1) the acquisition and sale of a radio station owned wholly or in part for ten years (WHBT, Harriman, Tennessee), and (2) the acquisition and sale of a radio station owned by appellant for two years (WDEH, Sweetwater, Tennessee) where appellant represented to appellee that he wished to sell both in order to retire from the broadcasting business in the respective communities in which said stations were located without further indicating in the applications so to sell that such reasons were motivated by the ill health of appellant caused by successive managers in the absentee-owned (WDEH) facility; where appellant had on file with the appellee at the time the aforesaid applications to sell WHBT and WDEH were pending an application for a third radio station in a different community (WLIV, Livingston, Tennessee) in which he was proposed as the "General Manager" and a fifty percent owner; and where appellant was not active in the operation of the third station (WLIV) after it went on the air for the eight-year period during which appellant held his ownership interest therein?

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*The question is framed differently by the appellee and intervenor. As posed by them, the question presented is set forth in the pre-hearing stipulation approved by order of this Court on October 11, 1967.

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BRIEF FOR APPELLANT

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JURISDICTIONAL STATEMENT

This is an appeal from a Decision of the Federal Communications Commission released on August 9, 1967, which after hearing on a trafficking issue and an economic injury issue raised by the only existing broadcast facility in Harriman, Tennessee, denied on the trafficking issue only the application of appellant for a construction permit for a new standard broadcast station for that community. The appeal is taken pursuant to Section 402(b) (1) of the Communications Act of 1934, as amended, 47 U.S.C. § 402(b) (1); Section 10 of the Administrative Procedure Act of 1946, as amended, 5 U.S.C. § 702; the Judicial Review Act of 1950, as amended, 28 U.S.C. § 2342; and Rule 37 of the Rules of this Court. Petition for review was filed on August 11, 1967. Folkways Broadcasting Company, Inc., filed a notice of intention to intervene on that same date. The certified index to the record was filed on September 18, 1967.

STATEMENT OF THE CASE[1]

This case arises from the August 8, 1967,[2] decision of the Commission which, *inter alia*, denied the application (File No. BP-15122) of Crowder for a construction permit for a new standard broadcast station to be operated on 970 kilohertz with 500 watts power, daytime only, in Harriman, Tennessee.[3] The application was filed with the Commission on October 4, 1961. Except for an amendment filed on November 13, 1961, nothing occurred with respect to the application for more than fourteen months. On December 10, 1962, the licensee of Radio Station WHBT in Harriman (Folkways) requested the Commission to either deny the Crowder application or to designate it for hearing upon seven issues.[4]

[1] Appellant, appellee, and intervenor may be referred to herein as "Crowder", "Commission", and "Folkways", respectively. Citations to the record will be "R. __", except for transcript references which will be "Tr. __". Because of the length and complexity of the fact pattern, attached hereto as an appendix is a date chronology.

[2] Released on August 9, 1967, 9 FCC 2d 731, 10 RR 2d 981. (R. 1117)

[3] The decision also ordered that the operation of Radio Station WXXL (Crowder's facility in Harriman) be terminated at the end of the broadcast day of August 15, 1967, that the petition for an order in the nature of enlargement of issues filed on June 12, 1967, by Folkways be dismissed, that the petition for reconsideration of the Commission's Order released on May 12, 1967 (FCC 67-500) be denied, and that the motion to correct the transcript filed on July 14, 1967, by Folkways be granted except for those requested changes not specifically objected to by Crowder and denied the same in all other respects.

[4] The issues were:

(1) To determine whether there are adequate revenues to support more than one standard broadcast station in Harriman, Tennessee, without loss or degradation of stand-

Crowder's Broadcast History, 1946-1962

Prior to 1946, Crowder had not engaged in broadcasting activities. In that year, a group of Harriman businessmen formed a corporation known as Harriman Broadcasting Company, Inc., to request permission of the Commission to construct a standard broadcast station on 1230 kilohertz (then kilocycles) with 250 watts power in Harriman. Permission was granted, and the station went on the air in 1947 as WHBT. Crowder took over in 1948 as its operating head. Crowder, a Harriman resident, owned eight of forty-eight shares in the corporation. His stock was valued at $4,000.

Crowder operated WHBT from 1948 throughout the remainder of its group ownership. On April 24, 1950, the corporate group requested approval of the Commission to transfer all of the company's stock to Crowder in return for a payment to the others from Crowder of $20,000 (BTC-935). The total value of the corporation's stock, including Crowder's eight shares, was $24,000.

After Commission consent, the transfer was consummated on August 16, 1950. At this point, Crowder for the first time became the sole owner of any broadcast station. He continued in his WHBT capacity as its operating head for six more years. In 1951, he filed the required application for WHBT license renewal. He acquired an FM construction permit for

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ard broadcast service to Harriman and surrounding areas;

(2) To determine whether the applicant is financially qualified to construct and operate the proposed station and whether its estimate of expected operating revenues and expenses is reasonable;

(3) To determine whether F. L. Crowder in view of his proposals as to staff and operating expenses is qualified to operate its (sic) station in the manner proposed by his application;

(4) To determine whether or not the applicant, F. L. Crowder, has made any efforts, and if so to what extent, to determine the tastes, needs and desires of Harriman, Tennessee, and the service area his proposed station would provide with technical service;

(5) To determine whether the applicant has concealed or failed to disclose or attempted to misrepresent any material representation in connection with the statements in his application concerning his efforts to survey the community he proposes to serve and the community's needs;

(6) To determine whether F. L. Crowder has been engaged in the trafficking of broadcast authorizations, and whether the captioned proposal for a station in Harriman, Tennessee, would create an opportunity for trafficking contrary to the purpose for which a broadcast authorization is granted; and

(7) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the captioned application would serve the public interest, convenience and necessity. (R. 104).

Harriman in 1953, and started to build it. In 1954, he made improvements to WHBT at a cost of $2,047.

That same year, Harriman Broadcasting Company, Inc., received Commission permission to construct a standard broadcast station in Sweetwater, Tennessee,[5] on 800 kilohertz with 5oo watts power, daytime only. Commission consent to the construction was received on September 15, 1954, and construction was commenced. At this point in time, Harriman Broadcasting Company, Inc., owned wholly by Crowder, had WHBT in Harriman (since 1946), a construction permit for an FM station in Harriman (since 1953), and a construction permit for WDEH in Sweetwater.

Several things occurred with respect to the three facilities in 1954. A fire destroyed the FM transmitter and the building in which it was housed. Crowder was advised for tax reasons by his accountant to hold the assets of Harriman Broadcasting Company, Inc., as an individual rather than as the owner of 100% of the corporate stock. Hence, on December 7, 1954, the FM permit was returned voluntarily to the Commission by Harriman Broadcasting Company, Inc. On that same date, the Commission was requested to approve the assignment of the license of WHBT and the construction permit for WDEH from Harriman Broadcasting Company, Inc., to Crowder personally. It did so, and the assignments were made on December 31, 1954. Harriman Broadcasting Company, Inc., was then dissolved. (Tr. 238, 323)

By January, 1955, construction of WDEH in Sweetwater was completed, and the first day of February a license application for WDEH was filed with the Commission. Program tests were authorized on February 4, 1955, and the Commission granted the WDEH license application of February 17, 1955. Crowder at this point owned as an individual licensee Station WHBT in Harriman, the town of his residence since 1932, and Station WDEH in Sweetwater, an absentee licensee facility. (Tr. 345)

On June 22, 1955, Crowder engaged Blackburn-Hamilton (now Blackburn and Company, Inc.), media brokers, to sell both stations. As a result, on January 18, 1956, Crowder executed a contract for the sale of WDEH for $52,500 to Marto Broadcasting Company. On February 14, 1956, an application (BAL2240) to assign the license of WDEH to Marto was filed with the Commission. For reasons connected only with Marto, the application was withdrawn on July 25, 1956.

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[5] Sweetwater is some 30 road miles from Harriman.

On July 30, 1956, a new application for assignment of the WDEH license was filed (BAL-2399). The proposed assignee was a corporation called WDEH, Inc., which (like Marto) had been procured as a purchaser by Blackburn-Hamilton, and the sales price was the same as was that to Marto – $52,500.

In 1956, Crowder also had on file an application to increase WDEH's power from 500 watts to 1,000 watts. The assignment of license application was granted on August 29, 1956, and consummated on September 5, 1956.

On April 13, 1956, Crowder contracted to sell WHBT to Folkways Broadcasting Co., Inc., which at that time was composed of Ernest Tubb, Hank Snow, and William McDaniel.[6] The sale price was $80,000, with $10,000 down and the balance in 83 installments of $835 per month with a final payment of $695. The balance due of $70,000 was evidenced by a note in that amount secured by a deed of trust on the real estate and a chattel mortgage on the personalty. The note contained a right of pre-payment without penalty. The Commission granted the application on June 13, 1956, and the assignment was effected on July 1, 1956.

In 1955, Crowder's brother-in-law, Reuben H. McCoin,[7] operated an automobile dealership in Livingston, Tennessee, which is some 75 road miles from Harriman. In that year, McCoin sold his dealership. Desiring to engage in broadcasting but knowing nothing of the business, McCoin approached Crowder to help him, and a partnership between the two was formed. (Tr. 1483, 1485-1487, 1599)

In January, 1956, before any application was filed to sell either WHBT or WDEH, the McCoin-Crowder partnership filed with the Commission an application signed by Crowder for permission to construct a standard broad broadcast station in Livingston (BP-10326) on 920 kilohertz with 1,000 watts power, daytime only. The applicant was composed of Crowder and McCoin as equal partners doing business as Audio Broadcasters. Anticipated costs of construction were $11,875, with each partner to contribute $7,500 as new capital. Crowder was listed in the application as the proposed General Manager with McCoin as the proposed Station Manager.

The Commission granted the Livingston application on May 3, 1956. The station was constructed by November of that year when an application signed by McCoin for license for WLIV (BL-6402) to cover the construction permit (BP-10326) was filed.[8] WLIV went on the air on November 16, 1956, when the Commission granted program test authority. The license was granted by the Commisison on November 26, 1956.

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[6] The present principals of Folkways had no connection with the purchasing corporation in 1956.

[7] McCoin died in 1966.

In September, 1956, during the period WLIV was under construction, Crowder purchased the 7-Up Bottling Plant in Livingston.[9] From 1956 onward for several years, Crowder spent several days each week at the Livingston bottling plant.

The WLIV license renewal application signed by McCoin was filed with the Commission on May 4, 1958. Therein, Crowder was still listed as General Manager with McCoin as Station Manager, although Crowder did not see this application or know that he was still listed in any staff capacity.[10] (Tr. 1485-1487) The Commission renewed the WLIV license on July 2, 1958.

Going now to the acquisition of Folkways by its present majority stockholder, Kenneth J. Crosthwait, Crosthwait was employed at WHBT as assistant manager by Tubb and Snow after Crowder sold WHBT to Folkways in 1956. (Tr. 782-783). On May 28, 1960, Crosthwait bought a 50% stock ownership in Folkways for $5,000. He acquired the remaining 50% for $8,000 on July 20, 1961. Crosthwait continues today as the majority owner of Folkways.[11]

Thusly, by December 10, 1962, when Folkways petitioned to deny or to set for hearing the Crowder application (File No. BP-15122) for permission to construct a new standard broadcast station in Harriman, the original Folkways stockholders had sold their interests to Crosthwait, who, in turn, had sold minority stock interests to Carrigan and Roberts. Bot the call letters of the Harriman station (WHBT) and the name of the corporate licensee (Folkways) remained the same as they had been.

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[8] From this time onward, every application for WLIV was signed by McCoin. Neither the Commission's files nor those of Blackburn-Hamilton contain any record of Crowder again executing any document or application involving Station WLIV. Prior to the filing of this WLIV application, Crowder had signed all applications regarding WHBT and WDEH.

[9] Crowder still owns this business, and now values the building and equipment used therein at $239,599.

[10] Crowder did not see the license renewal applications which were signed and filed with the Commission by McCoin for the years 1958, 1961, and 1964 (Tr. 150-251, 256). Each continued to list Crowder as General Manager although Crowder was not aware of this.

[11] In 1962, Crosthwait sold a 10% interest in Folkways for $10,000 to William R. Carrigan and a 10% interest for $10,000 to Grant Roberts. This was $7,000 more than he paid for his 100% stock interest. On January 15, 1965, Crosthwait sold an additional 5% interest for $5,000 to Carrigan and 5% to Roberts for $5,000. This reduced Crosthwait's interest in common voting stock to 70%, Carrigan and Roberts each having 15%. In April, 1966, 150 shares of preferred, non-voting Folkways stock were sold to Messrs. Brown, Neil and Rymer for a total consideration of $15,000 (Tr. 788-789, 790).

This, then, was Crowder's broadcast activity in pertinent part from its inception in the mid-forties to December, 1962, when Folkways as the licensee of Station WHBT in Harriman filed its Petition to Deny. In sum, in 1962, Crowder had owned a part or all of WHBT in Harriman for ten years (1946-1956), and had been operating WHBT for eight years (1948-1956). He signed all applications regarding this station. He had owned WDEH in Sweetwater for two years (1954-1956) and had operated it at all times with hired managers. He signed all applications regarding this station. He still owned a 50% interest in WLIV in Livingston which he had for six years (1956-1962) but had not been active in the station since it went on the air. He signed only the application for permission to construct this station, McCoin having signed the license application in 1956 and the renewal applications filed in 1958 and 1961. From the sales of WHBT and WDEH, Crowder realized a total gain of $83,850 (sales prices less depreciated asset value). (Tr. 1484, 1619-1620, 1645-1646)

Crowder's Broadcast History, 1963-1967

On December 10, 1962, Folkways[12] filed its Petition to Deny, requesting denial of the Crowder application to construct a second radio station in Harriman or, alternatively, that the Crowder application be set for hearing.[13] Of the seven issues requested,[14] one was directed to a trafficking allegation and one to a *Carroll* economic issue.[15]

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[12] Also on December 10, 1962, Petitions to Deny the Crowder application were filed by Richard W. Holloway, tr/as Dick Holloway Enterprises, licensee of Station WRKH in Rockwood, Tennessee, and by The First National Bank and Trust Company of Rockwood, a creditor of Folkways. The former did not pursue its position, and the latter was denied standing by the Commission. (See *ante* for the participation in hearing on behalf of Folkways by the bank's chief executive officer and owner, Harry T. Burn). (Tr. 397)

[13] To gain party in interest status, Folkways relied upon its stewardship of Station WHBT in Harriman vis a vis the *Carroll* doctrine. Since its inception as a broadcast service in 1947, WHBT has enjoyed a monopoly in Harriman, and the proposed Crowder station would provide competition to WHBT in that community. WHBT operates on 1600 kilohertz with 5,000 watts power, daytime only. It serves Harriman and Roane County. The only other station in the county is WRKH in Rockwood, which operates on 580 kilohertz with 1,000 watts power, daytime only. The present population of Harriman exceeds 10,000, with that of Roane County (as of 1965) being some 41,600.

[14] See footnote 4, *supra*, for the issues requested by Folkways.

Various pleadings followed.[16] On January 8, 1963, Crowder responded to the Folkways Petition to Deny. In pertinent part therein as to the allegation of trafficking, he stated that:

> "The true facts (sic), which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his radio interests due to ill health. Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio industry." (R. 144).

For the sake of some semblance of chronology, it is necessary to return to Crowder's 50% ownership interest in WLIV. On April 14, 1964, an application to assign Crowder's 50% interest in the station's licensee to McCoin for $50,000 was filed with the Commission (BAL-5077).[17] On May 11, 1964, the Commission granted the assignment application. Thusly, Crowder held his Livingston interest for eight years (1956-1964).

On December 17, 1965, the Commission wrote to Crowder, stating:

> "In your opposition (to the Folkways Petition to Deny) you state, *inter alia*, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were a party to an application for a construction permit for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50% partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this matter. Such supplemental statement should be served upon the petitionrs and their counsel, if any.
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> "We hope to give this matter expedited consideration in view of the lengthy period of time your application has been pending before the Commission (since October 4,

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[15] *Carroll Broadcasting Company, Inc. v. Federal Communications Commission,* 103 U.S. App. D.C. 346, 258 F.2d 440 (1958).

[16] Crowder filed oppositions to the petitions to deny. Replies thereto were filed by the petitioners. Folkways filed an amendment to its petition after Commission inquiry re additional economic data. The amendment was opposed by Crowder.

[17] On June 9, 1965, McCoin filed an application to assign the license of WLIV to WLIV, Inc., for $130,000.

> 1961) and accordingly request that you file your response to this letter within ten (10) days hereof." (R. 309).

In a Supplemental Statement filed with the Commission on December 27, 1965, Crowder, through counsel, responded as follows:

> "In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could not longer continue in the day-to-day *active* operation thereof, and for that reason both stations were sold in that year. (Emphasis supplied). It was his intention then to withdraw from such activity, and the Commission was so informed. That same year, his brother-in-law, Mr. R. H. McCoin, was unemployed and wished to become engaged in broadcasting, having sold his car agency in 1955. Because he was totally inexperienced in such matters, Mr. McCoin looked to Mr. Crowder for guidance and wanted him to have a 50% interest. Mr. Crowder agreed to do so upon two premises; i.e., (1) that he would act in a supervisory capacity in the preparatory stages of the application and until the station went on the air, and (2) after that point in time he would act only as an advisor upon an as-needed basis. While the term "General Manager" perhaps is not wholly descriptive of his activity in recommending and hiring attorneys and consulting engineers, obtaining equipment, and the like, it was not used with intent to deceive or to confuse. In point of fact, it did describe his overall responsibility before the station began broadcasting. Subsequent thereto, he was not active in any role except that of an advisor, a situation which existed from about November, 1956, to June, 1964, when he disposed of his stock interest.
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> In sum, because of the then state of his health Mr. Crowder's last operational activities upon a routine basis in the broadcast field occurred in 1956 before he disposed of his interests in the Sweetwater and Harriman stations . . . his only activity in connection with (WLIV in Livingston) other than purely as a stockholder was in an advisory capacity upon an occasional basis when his brother-in-law as 'Station Manager' relied for advice upon what expertise Mr. Crowder had accumulated in this field." (R. 311-312).

By Memorandum Opinion and Order adopted on January 12 and released on January 14, 1966, the Commission granted Crowder permission to construct his station in Harriman (later to be known as WXXL).[18] At this point – January, 1966 – Crowder became a Commission permittee under the terms of a construction permit which required him to complete construction of the proposed station in Harriman within an eight-month period from date of grant. Folkways did not request a stay of the Commission, and Crowder commenced station construction.[19]

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[18] Commissioners Bartley and Cox dissented.

Folkways filed a Notice of Appeal on February 11, 1966, with this Court, alleging fundamentally that the Commission erred in not holding a hearing in the matter, although Folkways still did not request a stay to prevent construction by Crowder.

On August 2, 1966, Crowder notified the Commission that he had completed construction of his Harriman station, requested issuance of program test authority, and applied for license (BL-11425). Program test authority was granted on August 11, 1966, and WXXL (Crowder's Harriman facility) commenced broadcasting on August 12.[20]

On January 5, 1967, this Court, Judge Tamm dissenting, reversed the Commission's January, 1966, decision on the ground that a hearing was required under Section 309(d) of the Communications Act, as amended, 47 U.S.C. § 309(d), to determine whether Crowder had engaged in trafficking of broadcast authorizations and whether the advent of a new station in Harriman would lead to degradation of service to the public.[21] The Court rejected the other issues sought by Folkways, and remanded the case for further proceedings.[22]

The Hearing and Initial Decision

On March 3, 1967, the Commission ordered a hearing and designated the following issues:

> "1. To determine whether the applicant (Crowder) has engaged in trafficking in broadcast authorizations.

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[19] As a matter of course, if construction is not completed and a license application is not filed within the eight-month construction permit period, the construction permit automatically expires unless it has been extended by grant of anapplication for further time within which to construct.

[20] Both Folkways and Crowder filed applications, in July and September of 1966, respectively, for permission to construct an FM station in Harriman. Both applications presently are pending.

[21] *Folkways Broadcasting Co., Inc. v. Federal Communications Commission,* __ U.S. App. D.C. __, 375 F.2d 298 (D.C. Cir. 1967).

[22] WXXL has been off the air since August 31, 1967.

2. To determine whether there are adequate revenues to support more than one standard broadcast station in the area to be served without a net loss or degradation to standard broadcast service in the area.
3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience and necessity." (R. 284).

The Commission placed the burden of proceeding with the introduction of evidence on Folkways and the burden of proof on Crowder as to Issue 1 (trafficking), and placed both burdens on Folkways as to Issue 2 (the *Carroll* issue). Crowder petitioned to have the hearing held in Harriman wherein the majority of the witnesses resided and the economic data upon which WHBT relied for its claim of economic injury were located. Both the Broadcast Bureau and Folkways opposed the petition, and the Commission denied Crowder's request.

Pre-hearing conferences were held on March 14, 23, and 24; on April 12, and on May 5, 1967. Hearing commenced on May 8 and continued for all or part of eleven days until May 22, 1967, when the record was closed.

Under the designating Memorandum Opinion and Order, the Hearing Examiner was to have written an Initial Decision on the whole case, which was subject to ordinary, although accelerated, review. However, by order released on May 16, 1967 (R. 553), the Commission ordered that the record be certified to it for decision. This was done on May 22. On June 21, 1967, the Commission adopted an order (FCC 67-746, released on June 26) which remanded the record to the Hearing Examiner ". . . so that he may prepare an initial decision solely with respect to Issue 1 (trafficking) . . ." (R. 1075).

The Hearing Examiner issued his 29-page Initial Decision on June 30, released on July 3, 1967 (R. 1083). Therein, he considered, *inter alia*, the evidence of record as it pertained to the following matters:

1. The acquisition of WHBT
2. The construction and acquisition of WDEH
3. The sale of WHBT and WDEH
4. The acquisition of Crowder's interest in WLIV

5. The sale of Crowder's interest in WLIV[23]
6. Crowder's gain from WHBT, WDEH and WLIV sales
7. Motive and intent
8. The community survey[24]

With regard to the sale by Crowder of WDEH, which Crowder regarded as being forced upon him by the performance of two successive managers of that facility, the Examiner noted that:

> "Despite Folkways' ridicule, there was more than Crowder's spontaneous fancy in his assertion that he had been plagued by misbehaving sales managers at WDEH, since the assignee of that license, *in 1956, long before the present proceeding,* made a similar statement." (Emphasis supplied). (R. 1109).

As to the testimony of Burn, relied upon heavily by Folkways in its attempt to establish an intention to engage in trafficking, the Examiner evaluated thusly the alleged conversations with Crowder to which Burn testified:

> "Crowder in effect accuses Burn of spinning these dialogues out of his imagination; he denies that this took place. It need hardly be stressed that Burn was not a disinterested witness. His bank had filed a petition to deny Crowder's application; and his professions of friendship for Crowder are suspect in light of his testimony. But there is no doubt of his close association with Crosthwait, Folkways' chief stockholder. He has a natural reason to be vexed at Crowder for having possibly, but certainly unexpectedly, impaired the security of the bank's loan to Folkways.
>
> "The Hearing Examiner has already disavowed possession of a touchstone which distinguishes genuine gold from gilt (referring to his non-possession of the magical power infallibly to divine from the demeanor of witnesses whether they are telling the truth). As to probability inferred from the plausibility of the setting and the relative power of the participants' recollections, the changes are that on closer inspection the details are too well remembered for credibility by one of the supposed speakers (Burn), and that his recollection is so selectively retentive as to impugn the value of the

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[23] Except to mention Crowder's monetary gain, the Commission does not rely to any degree in its decision upon the sale of Crowder's interest in WLIV to support its trafficking conclusion. (R. 1126).

[24] The Commission made no mention in its decision of this evidence.

specific testimony. Thus, if Burn is to be exposed to the same niggling inspection to which Crowder has been subjected, it may be observed that he had an imperfect memory of his own immediate affairs (interest in WOVE), but gave what purported to be veristic accounts of the Crowder talks down to details of station authorization. As Crowder points out, however, Burn was wrong about his recountal of the McMinnville area as virgin territory into which Crowder thought it profitable to build a station; here Crowder apparently implies that Burn was making up this seemingly unassailable subsidiary fact out of whole cloth to lend an air of spurious truth to his testimony. Again, there is something unreal, in view of Burn's less than unfailing memory, in his testimony that some four years after his conversation with Crowder when Crowder admitted to his addiction to trafficking, and after Crowder had applied for WXXL, he accosted Crowder and accused him of apostasy from his own creed, just as if they had left off talking a minute before and had now resuled their chat.

* * *

"Burn would have Crowder stand on the same level as a corporate raider continually on the prowl, as if Crowder made it a practice to acquire and sell station out of hand. But in light of Crowder's actual experience, the alleged vaunting of his buccaneering tactics could only be regarded as a pathetic exaggeration." (R. 1109-1111).

Regarding Crowder's broadcast ownership history against which any charge of trafficking must be weighed, the Examiner found that:

> "Of overriding significance, applicable to the case as a whole, is the fact that the number of stations to which, without more, there could be a suspicion of trafficking, is *one*. (Emphasis is the Examiner's). Crowder had a minority interest in WHBT from 1947 to 1950, and 100% ownership from then until its sale in 1956. He was a 50% owner of WLIV from 1956 to 1964, when he was persuaded to sell it by his partner-brother-in-law, who may have (and this is purely extra-record conjecture and in any event immaterial to the case) resented Crowder's drawing $5,000 to $6,000 a year on a $7,500 money investment while he was doing little or no work; it *was* (Emphasis is the Examiner's) in the findings of fact, however (paragraph 32, above), that within a year of his buying Crowder out, McCoin sold WLIV for a sizeable gain, inducing a supposition that he had not been

> heart-broken at Crowder's departure.[25] (The periods for which Crowder held WHBT and WLIV are much longer than the minimum three-year holding which is a condition precedent to assignment without hearing, in the recent past established by the Commission, Rule 1.597.) The *one* (Emphasis is the Examiner's) remaining station constructed and sold within a fairly short time was WDEH. No matter how strenuously his opponents attempt to magnify Crowder's derelictions, therefore, it is clear that they are attaching a mighty big barnacle to a mighty small hull. The basic material for a charge of trafficking (in criminal law terms the *corpus delicti*) is not present." (R. 1109).

The Examiner concluded that ". . . the applicant, F. L. Crowder, has not engaged in trafficking in broadcast authorizations . . .". (R. 1112).

The Commission's Decision

On August 8, 1967, the Commission adopted its decision reversing the Hearing Examiner, although the Commission was ". . . in substantial agreement with the findings of fact . . ." narrated in the Examiner's Initial Decision. It based its opinion on its belief ". . . that the conclusions (in the Initial Decision) fail to accord proper weight to relevant and material evidence of record bearing on the question of trafficking, and that undue emphasis has been placed on certain facts, while others of equal or greater significance have not been given proper consideration." (It did not resolve the *Carroll* issue.)[26] (R. 1120)

It denied Crowder's application for a construction permit for a new standard broadcast (AM) station in Harriman, and ordered WXXL (which Crowder has been operating with Commission approval since August, 1966) off the air as of August 15, 1967.[27] This appeal followed.

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[25] Less than 13 months later, McCoin sold WLIV for $130,000. (See Footnote 17, *supra*.) On capital gain alone, McCoin made $72,500 from the sale ($130,000 less $50,000 paid to Crowder less $7,500 capital contribution). Such gain does not consider any returns to McCoin during the period from 1956 to 1965 when he owned 50% or all of WLIV and was its operating head.

[26] It did not "In light of (its) conclusions concerning WHBT and WDEH * * * resolve the trafficking issue as it relates to the Livingston station (WLIV)". Since it found that its findings and conclusions regarding the trafficking issue disposed of the case, it made no findings and conclusions regarding the *Carroll* issue. (R. 1126).

[27] This Court's stay permitted Crowder to broadcast through August 31, 1967.
gust 31, 1967.

STATEMENT OF POINTS

1. The Commission's repudiation of the Hearing Examiner's conclusions is arbitrary and capricious and against the weight of the evidence.

2. The application error made in listing a non-broadcast business (billiard parlor in Harriman) as owned when one-third thereof had been sold has no relationship to trafficking, nor can it in this record lend support to the agency's theory that Crowder's mistake is a misrepresentation indicating an intent to engage in trafficking.

3. Crowder's ten-year record of active broadcast service is wholly free of Commission or public complaint, and his attempts to improve service by up-grading transmission facilities and permissible power at both WHBT and WDEH are indicia of a lack of an intent to engage in trafficking.

4. Crowder's 1954 transfer of the assets of Harriman Broadcasting Company to himself as an individual indicates a desire to continue to operate WHBT and WDEH as contrary to a desire to sell those facilities.

5. Crowder's 1953-1954 attempt to bring FM service to the Harriman service area and his 1954 return of the construction permit to the agency without attempt to recoup his investment by permit sale is inconsistent with the theory that he acquired broadcast authorizations for sale rather than operation in the public interest.

6. Crowder truthfully and accurately gave as his purpose for requesting permission to assign the WHBT and WDEH licenses in 1956 his wish to withdraw from broadcasting at that time in Harriman and Sweetwater, respectively, and those statements are not inconsistent with use of the term "General Manager" in the January, 1956, application for permission to construct WLIV in Livingston.

7. The Supplemental Statement filed by Crowder in December, 1965, in response to a Commission inquiry does not indicate that Crowder's illness commenced in 1956.

SUMMARY OF ARGUMENT

This is a case where a broadcaster with an eighteen-year ownership record in only three broadcast stations has been subjected to what the Hearing Examiner has termed a "niggling" inspection, and branded a trafficker on the basis of unfair and unwarranted context and record distortion. He has been judged in effect in 1967 by 1962 Commission policy for two station sales which occurred in 1956. His testimony as to what occurred and why has been found unworthy of belief by the agency which prefers the testimony of an admittedly interested witness (Burn) who repeatedly was contradicted by the Commission's own files and the testimony of another witness called by Folkways (Crosthwait).

In its effort to support a conclusion of an intention in Crowder to engage in trafficking, the agency has ignored the patent bias against Crowder displayed by Burn, has ignored the fact that at the two conversations (1957 and 1961) he said he had with Crowder no one else was present, and has ignored the inherent unlikelihood that either conversation took place. Despite Burn's avowal that Crowder is a friend and a customer of Burn's bank, the fact is that Crowder and Burn are at best mere acquaintances. For instance, the record is indisputably clear that Crowder has never been a customer of Burn's bank, that Burn and Crowder are not residents of the same community, that they are not members of the same political parties, that they are not members of the same church, that they have never socialized together, and that neither is a member of a club to which the other belongs.

The Commission ignores the fact also that Burn places the first alleged Crowder conversation in Burn's bank in Rockwood in the Spring of 1957. Utterly no reason has been advanced to explain why Crowder would even be there. Both WHBT and WDEH had been sold since mid-1956. Crowder had no reason to discuss the radio business with Burn. Yet, the agency finds that Burn's uncorroborated, interested, and biased testimony is credible. In doing so, it disregards the view of the Hearing Examiner who terms Burn's account of events, in light of Crowder's actual experience, a "pathetic exaggeration" in finding Burn's recollection to be so selectively retentive as to impugn the value of his specific testimony. Although this Court ordered a hearing, the agency has chosen to override the decision of the fact-trier who was present throughout the hearing and to once again draw its conclusions from the cold record.

From 1946 when Crowder first acquired any broadcast interest through 1956, Crowder filed a minimum of twenty-seven applications and reports with the Commission. In one he made a mistake. It was not about programming. It was not about broadcasting at all. He listed ownership under other business interests of a billiard parlor when he then owned two-thirds of that business plus all of the building in which it was located. The business and building were acquired in 1944. Crowder has always (even to today) operated the business with a manager. In 1949, he sold a one-third interest in the business. In 1950, he forgot to note that sale in this totally unrelated business which has no financial or other relationship to Crowder's broadcasting record. The mistake was mechanically repeated by those who filled out some of Crowder's Commission applications, and not caught by Crowder in his inspection thereof. Somehow the Commission finds in this isolated bit of relative trivia an importance in placing an intent to traffick in Crowder. No matter how much surmise, conjecture, and over-inflation is present in the Commission's theory, the listing error simply does not warrant the inferred deliberate misrepresentation elevation given to it by the agency. And, *arguendo*, even if it did, what possible relationship to trafficking has the mistake?

In 1956, Crowder told the Commission that his purpose in selling WHBT after ten years ownership and WDEH after two was to withdraw then from broadcasting in Harriman and Sweetwater respectively. At the time of those statements, he and his brother-in-law had on file with the Commission an application to construct WLIV in Livingston. Crowder had put up one-half of the funds for that purpose and owned one-half of the company, but he had told his brother-in-law that he would not be active in the operation of WLIV after he helped him put it on the air. In that application, Crowder was listed as the proposed General Manager and his brother-in-law was the proposed Station Manager. Crowder lived in Harriman. McCoin lived in Livingston, some 75 miles away. The Commission granted the WLIV construction application and granted the applications to assign the WHBT and WDEH licenses, all in 1956.

Crowder did exactly as he represented to the Commission that he would do. He did withdraw from the radio business in both Harriman (WHBT) and in Sweetwater (WDEH). He did act as General Manager for WLIV until it was placed on the air in 1956. From that time on, this record and the Commission's own files reveal that he did absolutely nothing in the day-to-day operation of WLIV in Livingston. His brother-in-law was its active head, and remained so until he sold at a profit WLIV in 1965 after buying out his inactive partner in 1964.

Let it be said again that the Commission finds no fault with the service any of these three stations gave to the public during the entire period Crowder had any interest in them. However, to support its opinion of trafficking the agency points to Crowder's being represented in 1956 as "General Manager" of WLIV, and now states that this was a deliberate misrepresentation–it does that despite the fact that it found in 1966 on the exact same circumstances to the contrary. It goes further. Although Crowder filed no application for WLIV after it was granted a construction permit in 1956, did not even see them, and in fact was completely inactive in the business, the agency lays McCoin's continued listing in other WLIV applications as General Manager at Crowder's doorstep. Therein also it finds an intent to engage in trafficking. How McCoin's error in those actions (or Crowder's in identifying his pre-operational general manager type duties as those of a General Manager but not then stating in 1956 to the agency that he would not perform as a General Manager after WLIV went on the air) has anything to do with trafficking is left to imagination. In point of fact, it would seem that a trafficker would *not* reveal to the Commission intended continuation of broadcast activity, that he would hide it instead. Crowder, on the other hand, did the opposite. Even viewed as a "deliberate misrepresentation", as it was not the agency theory notwithstanding, it bears no relationship to an intent to traffick. Crowder is not on trial for proneness to err, even assuming that the two incidents (billiard parlor and General Manager) amount to that. That is not the issue.

One other factor is used by the Commission to support its decision. It misreads the plain language, and ignores the intent, of Crowder's 1965 response to an agency inquiry. He said therein that he sold WHBT and WDEH in 1956 because of illness caused by employee mismanagement of WDEH. During the hearing, he explained that such illness commenced in 1955 after WDEH became operational in February. For that reason, he placed the two stations on the market in June of that year. The Commission seizes upon the 1965 response which, interpreted as the agency chooses so to do, as a misrepresentation as to illness commencement. The Crowder response is before the Court for the Court's reading. It is submitted that the agency's reading is simply wrong. Furthermore, Crowder had no reason to make such a misstatement. In 1956, no rule or policy prevented sale of a broadcast station at any time, regardless of the length of time held. After 1962, a license must be held for three years. Not so, however, in 1956. And even under the 1962 instituted rule stations may be sold at any time for health or financial reasons. In other words, Crowder did not *need* to lie or to misrepresent, even assuming, *arguendo*, that he had an intent to traffick. He did not do so.

ARGUMENT

I

Despite Policy Vacillation in the Treatment of Trafficking Charges, the Commission Never Before Has Found Trafficking To Exist in a Fact Pattern Wherein in Reason Only One Broadcast Facility Was Involved, Regardless of the Interplay of the Elements of Price, Time and Intention.

"Trafficking" has been defined as speculation in the public domain, *Powel Crosely, Jr.*, 11 FCC 3, 3 RR 6 (1945); as a primary intention to sell broadcast properties at a profit rather than to operate them in the public interest, *WMIE-TV., Inc.*, __FCC __, 11 RR 1091 (1955), and *Romac Baton Rouge Corp.*, 7 FCC 2d 564, 9 RR 2d 1029 (Rev. Bd. 1967); as the acquisition of broadcast licenses for sale rather than service, *Folkways Broadcasting Company, Inc. v. Federal Communications Commission*, __ U.S. App. D.C. __, 375 F.2d 298 (1967), and as the acquisition and/or operation of a broadcast station for the primary purpose of selling or otherwise disposing of it for profit rather than for the primary purpose of serving the public interest, *F. L. Crowder*, 9 FCC 2d 731, 10 RR 2d 981 (1967). The Commission objects to it upon the theory that a government license granted in reliance upon an applicant's stated intention to operate should not, instead, be bartered away for profit to the detriment of the public interest. See *WMIE-TV, supra*.

In determining the existence or non-existence of trafficking, the Commission has most frequently considered as elements time, price, and intention. *Sunset Broadcast Corp.*, 5 FCC 2d 321, 8 RR 2d 821 (1966). It has never seemed to be able, however, to arrive at a policy which provides a predictable basis or standard to test allegations of trafficking in frequencies, and, as a result, it has vacillated from one extreme to the other in various factual contexts. (See dissenting opinion of Commissioner Webster in *E. D. Rivers, Sr.*, __ FCC __, 12 RR 281 (1955). In 1954, it held that sale of a television station for a profit of $750,000 after operation thereof for less than two years and the application within a year of the sale for another television station in a community from which a high grade of service would be provided to the original city was not trafficking. *Versluis Radio and Television, Inc.*, __ FCC __, 9 RR 1123 (1954). In 1956, it found that an unusually high profit from a station sale did not reflect adversely upon the seller providing only one station was involved. *The Travelers Broadcasting Service Corp.*, __ FCC__, 12 RR 689 (1956). In 1960, acquisition and disposal of five radio stations in fourteen years, with one such station having been held for less than two years, was not considered to be trafficking. *Laramie Broadcasters*, 29 FCC 1074, 20 RR 423 (1960). In that year also, the Commission considered it to be acceptable to file an application for a broadcast station within one year after the sale of other facilities, even if the application is for the same general area wherein the applicant has sold a former broadcast interest. *Eastern States Broadcasting Corp.*, 29 FCC 730, 19 RR 1143; *Richard B. Gilbert*, 28 FCC 34, 19 RR 574 (1960).

During the 1960 and 1961 fiscal years, 380 of 782 (48%) applications seeking substantial changes in ownership related to stations held less than three years. Few, if any, of the 380 applications were designated for hearing on trafficking issues. *Edina Corp.*, 4 FCC 2d 36, 7 RR 2d 767 (Rev. Bd. 1966). In nearly fifty percent of such applications (stations held less than three years), the selling prices were substantially in excess over the amounts paid by the sellers or expended by them in construction of the facilities involved. *Notice of Proposed Rule Making*, Docket No. 13864, FCC 60-1466 (1960).

In 1960, Congress amended the Communications Act to preclude the Commission from approving in hearing cases dismissal of a competing application, not involving a merger, for a consideration in excess of legitimate and prudent expenditures incurred in application preparation, filing and prosecution. Section 311(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 311(c).[28] Finally, effective as of March 23, 1962, the Commission adopted what has become known generally as the "Three-year Rule", 47 C.F.R. § 1.597, which provides that an applicant seeking Commission consent to a transfer or assignment of a station held for less than three years is required to make a compelling affirmative showing of unforeseen changed circumstances or a hardship, more or less beyond his control, for a grant without hearing. See *In the Matter of Amendment of Part 1*, 32 FCC 689, 23 RR 1503 (1962).

Still, no clear-cut policy has evolved to guide Commission consideration of trafficking allegations. The rationale of decisions in this area are reconcilable only by taking refuge in varying factual patterns. As acceptable in theory as this may be, excessive reliance thereon in fact results in vacillation as much now as in 1955 when Commissioner Webster dissented in *Rivers, supra*. For example, in 1966 the Commission found no trafficking where an applicant's principal had owned controlling interests in twelve broadcast properties over a period of years, all of which were disposed of at substantial profits. Of the twelve stations which were sold, one was held for nine years, one for seven, one for six, and one for two. *Sunset Broadcasting Corp., supra.* Likewise, in *Romac Baton Rouge Corp., supra,* a 1967 decision, the Commission decreed the non-existence of trafficking in a fact pattern disclosing seventeen acquisitions and sales or application participation at substantial profits over a fifteen-year period. Three of the nine stations in which a direct interest was held by the applicant and in another where the interest was held by his wife were held for less than three years. In this case, the Commission indicated that improvement of station facilities was an indication of an intent not to engage in trafficking.

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[28] As a matter of policy, the Commission now applies this standard to assignments and transfers of construction permits in general.

Variances in Commission treatment of trafficking allegations is best illustrated, perhaps, by the awesome difference between its conclusions in the Crowder case where in reason *one* station is involved and its conclusions in *KIMN Broadcasting Co.,* 8 FCC 2d 440, 10 RR 2d 237 (1967). In *KIMN,* a Petition to Deny the proposed transfer of control of a broadcast station pointed out that the principal stockholder of the proposed transferee had engaged since 1947 in thirty-four major transactions involving broadcast properties; that five such transactions involved sales of stations held less than three years, one of which was held for two months after acquisition and one having been held for five months after commencement of operation; that repeated inconsistent statements had been made to the Commission regarding such acquisitions and sales; and that the alleged trafficker's net worth because of his dealing in broadcast franchises had risen from $325,307 in 1945 to some $16,867,000 in 1962. Percentage of profit gain from a single station sale was as high as two thousand percent. Nonetheless, the Commission granted without hearing the acquisition requested, and dismissed the Petition to Deny, stating that the allegations raised of trafficking and inconsistent statements in prior applications were "without merit".[29]

It was against this background that the Commission decided the Crowder case some two months later. It found Crowder guilty of trafficking in a fact pattern which under any reasonable analysis of his broadcast history could involve only *one* broadcast station,[30] an agency conclusion never before made regardless of the interplay of intention, time and price. The root of the Commission's decision rests in its conclusion that Crowder lied as to his reasons or purposes in selling two broadcast stations he had owned for ten (WHBT) and for two years (WDEH) respectively, and that, therefore, he had an intent to traffick. The substantial weight of the evidence in this record does not support that opinion.

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[29] This Court subsequently issued a stay pending final disposition of the appeal or further order of the Court. *Dena Pictures, Inc. v. Federal Communications Commission,* No. 21,125, filed August 11, 1967.

[30] WDEH, the Sweetwater station Crowder owned for two years.

II

The Application Listing of a Business Totally Unrelated to Broadcasting as Owned, Whereas Crowder Then Owned Two-Thirds Thereof and One Hundred Percent of the Building in Which It Was Located, Has Relevancy to Trafficking.

Trafficking necessarily is composed of two ingredients—an intent to engage therein conceived at some point before disposal of the broadcast facility and consummation of that intention by disposal. One without the other is not sufficient, and of the two, intent is the key. It must be established by credible evidence and cannot be inferred simply because of a sale, else every broadcaster who has disposed of a broadcast facility is inferentially guilty of trafficking. Broadcasting is a business like every other, and as such it routinely involves ownership changes.[31] The submission to the Commission of an application for permission to construct or to acquire a broadcast station by assignment or transfer does not carry with it an implied promise that the applicant will maintain his ownership interest therein forever. At best, and only since adoption of the so-called Three-year Rule in 1962, such a request implies a commitment to operate the station acquired for a three-year period assuming it is profitable and ill health or other waiver-type reasons do not interfere. Even this was not the case in 1956 when WHBT in Harriman (held for ten years) and WDEH in Sweetwater (held for two years) were sold by Crowder. At that time, one could sell for any reason at any time. Crowder's sales, however, could be judged even by today's standards and be found not wanting.[32]

Crowder has owned all or a part of three broadcast stations over a period of some eighteen years, 1946-1964. He owned one-sixth of WHBT in Harriman from 1946 to 1950.[33] From 1950 to 1956, he owned all of this station. He owned all of WDEH in Sweetwater for two years, 1954 to 1956. He owned fifty percent interest in WLIV in Livingston for eight years, 1956 to 1964. He sold WHBT and WDEH in 1956, and he sold his interest in WLIV to his 50% partner in 1964. In each case, he received consideration in excess of the depreciated value of the assets. In other words, using that criterion, he made a profit from each sale. However, the Commission does not find such profits to have been exorbitant or unrealistic. It does not appear to rely upon the "price" element of trafficking for conclusion support, contenting itself with reciting from the Hearing Examiner's Initial Decision the gains from each of the three disposals.[34]

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[31] On September 22, 1967, Chairman Hyde of the Commission addressed the International Radio & Television Society in New York City. During the course of his remarks, he stated that "I trust that I have not given the impression that I've overlooked the fact that broadcasting is business, small business in many, many communities, big business in the national sense".

[32] Crowder sold WDEH because absentee-ownership forced him to rely upon hired managerial assistance. The station was not financially successful, creating such concern in Crowder that his health suffered. For these underlying motives, he wished to get completely out of broadcasting in both Harriman and Sweetwater. Today, waivers of the Three-year Rule are granted by the Commission for both financial and health reasons. See *A-C Broadcasters*, FCC 67-1084, decided September 27, 1967, wherein the

Nor does the Commission seem to rely for its trafficking finding upon the length of time Crowder held his interest in WHBT in Harriman (ten years) or in WDEH in Sweetwater (two years). Indeed, it appears not to have retreated in this respect from the views expressed in its January 12, 1966, opinion which granted a construction permit to Crowder to build WXXL in Harriman; to-wit:

> "Our records indicate that Mr. Crowder had an ownership interest in WHBT as early as 1946; that he became sole owner in 1950 and operated that station until 1956. He was sole owner and operator of WDEH from 1954 until it was sold in 1956, and he held his 50% interest in WLIV from 1956 until 1964 . . . In summary, then, Mr. Crowder has been in and out of three radio stations over an 18-year period, and is currently applying for a fourth station. We do not believe that this record indicates a pattern of 'trafficking'." (R. 328)

Commission stated that ". . . requests to transfer a station because it is financially unprofitable do not warrant an inference of trafficking." Of course, no question of that nature could arise with regard to the sale of WHBT. Crowder held that interest for ten years before he sold.

[33] The other stockholders were Harriman residents as was Crowder.

[34] In any event, an adverse determination of profit in a trafficking context would require evaluation of factors which the Commission has not considered in this case. Without regard to any returns Crowder realized over the years from the operation of the three stations in which he had interests, his total gain from the sales thereof based only upon sales prices and book values of assets was $133,855 (WHBT, $61,350; WDEH, $22,505; and WLIV, $50,000). Such calculations ignore the good will, public acceptance, market growth, market potential, advertiser usage, station earnings and other normally used yardsticks in station worth calculations. Also ignored are the appreication factor over the years for most going businesses, and the decreased purchasing power of the dollar since 1946. In view of the Commission's views, it would seem appropos that it ignore this element in the Crowder fact pattern.

To support that belief, the Commission cited the *Versluis* case, *supra*, a decision just as applicable today to Crowder's station time-held fact pattern as it was in early 1966.

All of which leaves "intention" to engage in trafficking as the decisional element. The Commission has chosen to disbelieve Crowder's reasons or purposes for his withdrawal in 1956 from broadcasting in Harriman and Sweetwater. Hence, the Commission reasons, Crowder must have intended to "traffick". It points to what it terms deliberate misrepresentations, even going so far as to so impliedly characterize an insignificant mistake Crowder made in 1950 by listing a minor business interest totally unrelated to broadcasting (billiard parlor) as owned instead of two-thirds owned.[35]

In 1946, Harriman had no broadcast station. In that year, a group of Harriman residents, one of which was Crowder, applied to the Commission under the corporate identity of Harriman Broadcasting Co., Inc., for permission to construct one. Crowder had a one-sixth interest in the applicant company. Permission was granted, and WHBT commenced operation in 1947.[36] Crowder became General Manager of this station in 1948, and from that time on was responsible for its day to day operation. Day in and day out, month in and month out, he operated this Harriman station on a full-time basis for the next eight years. In all the reports and applications he filed for those eight years, he made but one mistake. The Commission's branding him as a trafficker is based in part upon it.

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[35] Since acquiring this business and building in 1944 (See Footnote 9, *supra*), Crowder has always owned 100% of the building in which it is located and did own 100% of the billiard parlor business itself until 1949 when he sold a one-third interest to a Mr. Derrick. Mr. Crowder retains to this day his total ownership of the building and his two-thirds ownership of the business. He has never been active in this business, and he did not need its assets or its income to show financial ability in any application in which the ownership error occurred. Thusly, Corwder's financial statements filed with the 1950 application whereby Crowder's fellow stockholders in WHBT wished to sell their interests therein to Crowder for $20,000, showed total assets of $56,611.66. Of that amount, the business building was listed at $20,000. Crowder owned all of this. The billiard equipment was valued at $5,000. Crowder owned two-thirds of this. His net worth was $52,511.66. Crowder borrowed $20,000 to buy out the stock of his fellow stockholders. The loan was secured by a deed of trust on the business building for $10,000, a deed of trust on his residence for $5,000, and by a pledge of the stock of the licensee of WHBT (Harriman Broadcasting Co.) for $5,000. Hence, the one-third ownership interest in the billiard parlor business which Crowder had sold in 1949 had utterly nothing to do with any broadcast acquisition, activity, or disposal. In each subsequent application filed by Crowder, he continued to list ownership of the billiard parlor. The Commission, ignoring other applications in which the same error occurs, specifically refers to the application for a construction permit for WLIV filed in 1956 and the application for permission to construct WXXL in 1961. In the former, anticipated costs of construction were $11,875 to be financed by a capital contribution from McCoin and Crowder of $7500 each. Crowder's December 31, 1955, financial statement which accompanied the application for WLIV showed that he had more than $8,000 cash in the bank with assets amounting to $178,190. Of that amount, the billiard room equipment was listed at $10,000. His net worth was $107,513. Obviously, he did not rely upon a one-third billiard parlor business ownership he did not have. That Crowder did not have to rely upon total ownership of the billiard parlor business to provide financing sufficient to construct WXXL would seem patent in view of the Commission's findings that he had made some $135,855 from the sales of WHBT, WDEH and WLIV.

On April 24, 1950, an application for transfer of control of the WHBT licensee was filed. It requested permission for five of the six Harriman stockholders to sell their interests in Harriman Broadcasting Co., to Crowder for a total of $20,000 cash.[37] In that application, the five stockholders responded to the form's requirement to "Give transferor's reasons or purposes for requesting this transfer of control" by stating that "The stockholders (except Crowder) wish to sell their stock in the Harriman Broadcasting Company, Inc., as they have other business enterprises into which they prefer to invest the proceeds which gives them a more profitable return on their investment." Since WHBT had lost $1,570 in 1947, had lost $2,329 in 1948, and had lost $2,677 in 1949, it would seem that of the original stockholders only Crowder was willing to invest still another $20,000 in WHBT and continue the station's operation despite its record of continued and annually increasing losses.

It was in this application that Crowder erred in listing his billiard parlor ownership which he had since 1944. Whereas, in 1950 he only owned 100% of the building in which it was located and two-thirds of the business itself, having sold one-third thereof the year before, in listing his other business interests, he listed himself as owner. In each succeeding application which Crowder filed or was party to in connection with WHBT, WDEH and WLIV, he repeated, by rote, the initial mistake. In its decision, however, the Commission refers only to such ownership listings which appeared in the 1956 WLIV construction permit application and in the application Crowder filed in 1961 for permission to build WXXL, although the entries therein are not essentially distinguishable from such representations in all the other applications Crowder filed. Nonetheless, the Commission refers to such entries as misrepresentations,[38] and finds this to be one of "These problems concerning Crowder's credibility (which) also affect our judgment concerning his denial of testimony of Harry T. Burn . . ." (R.1124)

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[36] In any station in which Crowder had an interest, the construction permit requirement of station completion within eight months was observed. Never once did he request an extension of time, thus delaying the broadcast service to the public. The Commission's files do not reflect that such is always the case – the UHF files for example.

[37] Total value of the WHBT stock was $24,000, of which Crowder's interest was valued at $4,000.

In 1964, the Commission amended its Rules to require the reporting of major changes in the information contained in its files. *In the Matter of Amendment of Part 1 of Rules of Practice and Procedure,* __ FCC 2d __, 3 RR 2d 1622 (1964). The new Rule, Section 1.65, 47 C.F.R. § 1.65, said the Commission, was merely a restatement of well established Commission policy. As a guide to interpretation of the new Rule's requirements, the Commission stated that:

> "The rule is not intended to require the reporting of minor changes which would have no significance in the Commission's consideration of an application under the public interest standard. We recognize that some material matters may normally fluctuate on a day-by-day basis, such as the financial position of an applicant, the current business interests of its principals, etc. The rule does not contemplate the reporting of normal, foreseeable everyday changes unless they are substantial and might have a significant impact on the status of an application. The changes to be reported are those which are major or out of the ordinary—those which may make a difference from the standpoing of the public interest, and those which the Commission should be aware of in order to reach a realistic decision." [3 RR 2d at 1625]

Examples given by the Commission as falling within the purview of the new Rule included any substantial change in circumstances pertaining to basic qualifications (legal, technical, financial, character), matters affecting service to the public or the nature of the proposed operations and factors urged as a basis for a grant or a comparative preference. In broadcast cases, the Commission noted the reporting requirement would apply to any substantial change in ownership or legal status, such as a corporate merger, the death of a principal who is important to an application either as a ground for preference or as a basis for demerit, a substantial change in plans as to program proposals, studio facilities or integration of ownership with management, or a change of circumstances affecting the diversification factor or sufficiently altering the financial status of an application as to be pertinent to financial qualifications.

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[38] "Misrepresentation" has been defined as "intentional deceit and concealment" in *Genkar, Inc.*, 35 FCC 774, 1 RR 2d 766 (Rev. Bd. 1963), a case wherein discrepancies in reporting stock transactions to the Commission and failure to disclose other matters were not sufficient, unless coupled with surmise and suspicion, to support a conclusion of willful misrepresentation.

Hence, even under the "codification" standards of 1964, it is doubtful that Crowder's failure to remember in 1950 that he had sold one-third of his billiard parlor interest is of importance. The Commission's elevation of the mistake to the level of "misrepresentation" is suspect. See *Cherokee Broadcasting Co.*, 8 FCC 2d 1277, 9 RR 2d 1227 (Rev. Bd. 1967), wherein the failure even to list certain business interests was not considered to require the addition of a hearing issue regarding misrepresentation. The mechanical repetition by Crowder of the mistake in succeeding applications may give rise to a question as to whether he is prone to repeat an initial mistake or is careless in that regard, but such repetition does not lend itself to an inference tending to support a trafficking conclusion.[39] Whatever this record may tend to prove, it is not trafficking.

III

Crowder's Uninterrupted Ownership Covering a Span of Ten Years of WHBT in Harriman and WDEH in Sweetwater Is Without Blemish in Operational Service to the Public, and Has Embodied Within It Specific Indicia of the Absence of an Intent To Engage in Trafficking.

The Commission granted the WHBT transfer of control application on July 21, 1950, and on August 16 of that year, Crowder became sole owner for the first time of any broadcast facility after having been a minority stockholder for two years. He continued over the years to operate the station on a day-by-day basis. On October 31, 1951, he filed the WHBT renewal of license application. The Commission granted it. In 1954, he spent some $2,047 to improve the station's antenna system. Although the Commission does not even consider this fact, it has held in other instances that improvement of station's facilities indicates the lack of an intention to engage in trafficking.[40]

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[39] In oral argument before the Commission, counsel for the Broadcast Bureau stated as to the billiard parlor references, "Now it is not a very significant point. We submit, it isn't taken alone, by itself, . . .". (Tr. 1842). Whether considered alone or otherwise, it is trivia, and it is the only error Crowder ever made in all the applications he filed with the Commission during the period of his broadcast ownership. His "General Manager" representation in the WLIV application was not an error or a mistake in the sense that it was inaccurate when made. Only the connotation placed thereon by the Commission made it so.

[40] See *Romac Baton Rouge Corp., supra.*

On December 7, 1954, Crowder on the advice of his accountant for tax purposes requested permission to hold the WHBT license (and by this time, the WDEH construction permit) as an individual rather than as the sole stockholder of a corporate entity. The Commission agreed, and on December 31, 1954, the assignment to Crowder as an individual was consummated. Harriman Broadcasting Co., Inc., was dissolved. Just as it failed to consider Crowder's improvement of WHBT's facilities, the Commission also ignored the ramifications of this event. It, too, was a clear indication of Crowder's intention to continue his day-to-day *operation* of WHBT (and WDEH) rather than being indicative of an intention to *sell* the station. The only tax advantage available to Crowder holding as an individual rather than as a corporate stockholder was the avoidance of double taxation on ordinary income derived from operation of the business. A sale, on the other hand, would have been taxed as capital gain whether the asset sold was held individually or in a corporate capacity. No tax advantage was gained by Crowder in holding as an individual except that which would accrue by virtue of continued operation of the station.[41] At this point in time, surely (December, 1954), it must be abundantly clear that Crowder could not have held an intention to "traffick" in WHBT's license.[42]

Crowder continued to operate WHBT. On April 27, 1955, in compliance with the Rules, he filed again for renewal of the station's license. The Commission granted the application. By June, 1955, Crowder had owned a minority interest in WHBT for four years, and had owned all of it for five additional years. In that nine-year period (or, indeed, for any period for any station), the record reflects not one complaint from the public or from the Commission, not even an inquiry. To the contrary, Black, a Folkway's witness who was Superintendent of the Harriman School System during the ten-year period Crowder had an interest in WHBT, testified Crowder always was cooperative vis-a-vis that station's operations and the Harriman schools.

Now as to WDEH, the Sweetwater station, Harriman Broadcasting Co., Inc., (which Crowder owned completely) on June 9, 1954, filed an application for permission to construct this facility, which the Commission granted on September 15 of that year. At this point, Harriman Broadcasting was the licensee of WHBT in Harriman and the permittee of WDEH in Sweetwater.

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[41] Internal Revenue Code of 1954, §§ 331 and 337.

[42] As the Examiner noted in his Initial Decision, the number of stations to which there could be a suspicion of trafficking is limited to *one*. That one is Station WDEH in Sweetwater which Crowder owned for two years.

WDEH was constructed and made ready for operation by Crowder within the eight-month time limitation imposed by the construction permit. On February 1, 1955, Crowder requested program test authority (a normal routine which permits operation pending actual license issuance) and the issuance of a license for that station. WDEH commenced broadcasting with Commission approval on February 4, and its license was issued on February 17, 1955. On April 27, 1955, Crowder filed the renewal of license application for this station. It was granted on July 20, 1955. Crowder attempted to improve the service offered to the public by WDEH just as he had with WHBT. On August 14, 1956, he filed an application with the Commission to increase power from 500 watts to 1000 watts. This was at a time when he had a contract to sell this station and an application to do so on file. He could not possibly realize any monetary advantage by increasing power. Under these circumstances, it is difficult to conceive of a more clear indication of a lack of an intention to bilk the public (traffick in licenses) than this. This was the act of a broadcaster dedicated to the public service. See *Romac Baton Rouge Corp., supra.*

IV

In Response to an Application Form Requirement To "Give a Full Statement of Assignor's Reasons or Purposes for Requesting This Assignment", Crowder Truthfully and Accurately Stated in 1956 as to Both WHBT and WDEH That His Purpose Was To Withdraw from Broadcasting in Harriman and Sweetwater, Respectively.

Because WDEH was located in Sweetwater and Crowder lived in Harriman where he was occupied with operational management of WHBT, Crowder hired one Lee to act as operational head of WDEH.[43] Lee was hired about the first week in January, 1955, and was kept in employee status until mid-March of that year. Lee proved to be less than satisfactory and Crowder replaced him with one Foster, who had a year's contract. The operation of WDEH, however, continued under Foster in a fashion other than that to which Crowder was accustomed in WHBT where he was the manager (and had been since 1948).

It must be understood at this point that Crowder's entire broadcast experience before he acquired WDEH in Sweetwater was with *one* station which *he* operated in his home town on a day-to-day basis. He had no experience with an absentee-owned facility wherein he had to depend for daily management upon any one other than himself. WDEH in Sweetwater was his initial (and only) attempt to operate that sort of broadcast station. WHBT, under Crowder, was a going successful business, and had been for years. WDEH, on the other hand, was from the beginning an unsuccessful station. Through February, March, April and May of 1955, WDEH lost advertisers. This definitely was not another WHBT operation, and Crowder wanted to know why. He examined the problem, found its cause, but was unable to remedy the matter. This for a man of Crowder's background and experience in radio was upsetting, to say the least. In Crowder's words, he became "a nervous wreck", so much that he asked advice of his physician who told him to remove the cause; i.e., to get out of radio.[44] (Tr. 1484)

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[43] Without such retention of an employee to operate WDEH on a daily basis under Crowder's supervision, Crowder could have been criticized for failure to provide operational daily management for WDEH. Obviously, Crowder could not alone perform this function for both WHBT and WDEH.

Crowder decided to retire from broadcasting in both Harriman and in Sweetwater. He had for nine years devoted his full time to WHBT. He improved it. He had acquired from the Commission an FM construction permit for Harriman, but returned it without placing the station on the air.[45] He had constructed WDEH in Sweetwater. It now was causing this successful broadcaster a good deal of trouble to which he was not accustomed in his only other radio experience (WHBT) in Harriman). Since he could not manage both stations personally, since a change of WDEH managers produced no remedy, and since Crowder's health was deteriorating, his course of action seemed clear. He decided to sell both stations.[46]

Crowder's decision to sell WHBT and WDEH occurred the week before June 22, 1955. It was then that he telephoned one Clifford Marshall in the

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[44] Crowder did not produce this doctor to testify during the Washington hearing. Because of this, the Commission finds what it terms "no corroboration" to be a supporting factor for its disbelief of Crowder. (R. 1126). Yet, Crowder's testimony stands unchallenged in this record. His opponents made no attempt even to identify the doctor, the place, time or occasion of Crowder's conversation. No attempt was made, as it could have been if Crowder's testimony was suspect, to produce the doctor in rebuttal. As the record stands, Crowder's testimony is positive and uncontradicted. It needs no corroboration.

[45] Notably, he did not try to sell – as he could have done if wished to traffick – the FM construction permit. He simply gave it back to the Commission. Since he had purchased a transmitter and other FM equipment, he lost without attempt to recoup whatever monies that cost.

[46] Twelve years later, the Commission concludes that Crowder's decision to sell evidenced a heinous intent to barter WHBT and WDEH without regard to the public interest. It is submitted that any reasonably careful and objective scrutiny of Crowder's decision in the context of events as they existed in 1955 will not support that theory.

Atlanta office of Blackburn-Hamilton, a media brokerage firm, to determine if he wished to undertake finding suitable purchasers. On June 22, 1955, Crowder signed listing agreements with that company for both WHBT and WDEH.[47] As of this date, Crowder by contract was committed to sell both stations to acceptable purchasers produced by Blackburn-Hamilton. The brokerage firm, however, produced no purchasers until 1956. In the meantime, Crowder continued his radio operations as he always had. The record reflects no complaint or lessening of service of any kind.

As a result of the employment of Blackburn-Hamilton, on February 4, 1956, application was made to assign WDEH to Marto Broadcasting Co., Inc. In this application, Crowder, in response to the form's requirement to "Give a full statement of assignor's reasons or purposes for requesting this assignment," truthfully stated that:

> "Assignor desires to withdraw from the broadcasting business in Sweetwater at this time and believes assignee will bring a broadcast service to the Sweetwater community that will be in the public interest."

For reasons connected only with Marto, the application was withdrawn on July 25, 1956. On July 30, 1956, application was made to assign the station to another Blackburn-Hamilton produced buyer, WDEH, Inc. Crowder repeated his reason or purpose for requesting the assignment in this application. It is in this application, filed with the Commission in 1956 long before any question arose as to Crowder's illness or his employee problems at Sweetwater (challenge first came in 1962 with Folkways' Petition to Deny), that Crowder's relation of these events receives unimpeachable support of decisional significance. A. D. Smith, Jr., on behalf of WDEH, Inc., the proposed assignee, included the following statement in the assignee's portion of the assignment application form:[48]

> "Mr. Crowder had an unfortunate experience during last year (1955) with two different managers–they were not completely honest in their business dealings, with the local people or Mr. Crowder. This had a very bad effect financially on WDEH.

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[47] Crowder fixes the approximate date of his call to Marshall by reference to the date on the listing agreements and the employee problems he was encountering at WDEH.

[48] The major portion of the application form for permission to assign a broadcast station in 1956 and now must be completed by the proposed assignee and executed by him. The proposed assignor has nothing to do with that section of the application.

> "The first of this year (1956), Mr. Crowder was fortunate in securing a new manager who has shown a very steady increase in business every month." (R. 1089)

The Commission totally ignores this statement contained in its own files since 1956, a statement made in 1956 about contemporaneous events by a completely disinterested third party, a statement made more than six years before any issue arose regarding this case, and a statement which supports absolutely Crowder's recollection of the WDEH employee events and his statements about them. The Commission's inconsistency is evident. It emphasizes in its decision what it terms a lack of corroboration from Crowder's physician, but, incredibly, does not even bother to note the relatively more significant corroboration contained in the 1956 Smith statement.[49]

Commission consent to the WDEH assignment application was granted on August 29, 1955, and on September 5, 1956, Crowder sold WDEH. He had owned it since September 15, 1954, within ten days of two years. He could have sold it at any time after September 15, 1954. No "Three-year Rule" existed to prevent it. Regardless of his decision to sell this station in June, 1955, and his efforts to do so subsequent to that date, the fact remains that he did own and operate this facility for two years without complaint from the public or the Commission. It is of considerable importance to note also that in 1956 the Commission did not question Crowder's "reason or purpose" (the application's language) for selling WDEH although twice it had that reason or purpose before it (the Marto application and the WDEH, Inc., application). Presumptively, it then considered Crowder's statement as to his desire to withdraw from broadcasting in Sweetwater to be quite acceptable.

During 1956, Blackburn-Hamilton found a buyer for WHBT in Harriman. Application to assign this station to Folkways Broadcasting Co., Inc., (then composed of others than the Crosthwait controlled complaining Folkways here), was filed on May 10, 1956. In this application, Crowder's accurate statement as to his reason or purpose for requesting the assignment was:

> "Assignor desires to withdraw from the broadcasting business in Harriman at this time and believes assignee will bring a

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[49] For example, Crowder did not need to consult a physician in 1956. His own evaluation of his health was sufficient to warrant the decision to sell. At that time, no Three-year Rule was in effect. He did not have to justify – as he would today – a sale of a facility held for less than three years or less than three months. In other words, he did not *need* a physician's support for Commission approval of the WDEH sale. Today, such support is customary if a station is sold in less than three years for health reasons. This was not true in 1956.

> broadcast service to the Harriman community that will be in the public interest." (R. 1088)

The Commission granted this application on June 13, 1956, and Crowder sold WHBT on July 1, 1956, after ten years of ownership. Again, the Commission in 1956 did not question Crowder's statement. As was the case of WDEH, it asked for no explanation or expansion. Presumptively, it then considered to be adequate Crowder's stated reason or purpose for selling WHBT.

V

The Notation in the Application for Permission To Construct WLIV in Livingston That Crowder Was the Proposed "General Manager" Accurately Described the Duties Crowder Performed Before That Station Became Operational, Was Not a "Deliberate Misrepresentation", Was Not Indicative of a Trafficking Intent, and Was Not Inconsistent with the WHBT and WDEH Assignment Application Statements That Crowder Wished To Withdraw from the Radio Business in Harriman and Sweetwater.

Thus ends the chronology of the two stations which Crowder owned completely and upon which the Commission expressly rests its trafficking conclusion. It did not include as another base for its trafficking finding Crowder's fifty per cent interest in Station WLIV in Livingston, although it relied heavily upon the information contained in the application to construct that station (Crowder's proposed General Managership), calling it a "deliberate misrepresentation". (R. 1123). That conclusion needs examination.

On January 23, 1956,[50] Crowder and his brother-in-law, McCoin, as equal partners doing business as Audio Broadcasters, filed an application[51] with the Commission for permission to construct WLIV in Livingston, Tennessee, which was McCoin's residence. In response to the form's direction to "State applicant's general plans for staffing the station, including the number of employees in each department (i.e., program, commercial, technical, etc.), and the names, residence and citizenship of the general manager, station manager, program director and other department heads who have been employed or whom the applicant expects to employ", Crowder was listed as "General Manager" and McCoin was listed as "Station Manager" under the heading "Administrative". (R. 1091) The application was signed by Crowder.

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[50] The date is important. This application was in the Commission's files for months before it received the applications to assign WHBT and WDEH wherein Crowder stated he wished to withdraw from broadcasting in Harriman and Sweetwater respectively.

[51] As to the billiard parlor ownership, the Commission also relies for misrepresentation thereof upon this application. Crowder simply stated here that he was "Owner since 1944" of "Harriman Billiard Parlor, Harriman Tennessee". As noted *supra* in Footnote 35, Crowder owned 100% of the building and 100% of the "business" from 1944 to 1949. In 1949, he sold one-third of the business, retaining 100% of the building. The Commission finds support for its theory that Crowder is not worthy of belief in Crowder's not listing this billiard parlor ownership as two-thirds. Yet, this also would not be accurate since he owned 100% of the building. In the relatively "more important" areas of representations in terms of public service, such as programming proposals, the Commission has found no fault in any Crowder application.

The Commission granted this application on May 3, 1956. At the same time, the Commission had in its files the WDEH Marto assignment application wherein Crowder had stated his reason or purpose for requesting to sell WDEH was to withdraw from the broadcasting business in Sweetwater. One week later, the WHBT assignment application was filed with the Commission At no time did the Commission find any inconsistency among these applications. It asked for no explanations. It requested no supplementation. The same was true when the WDEH application to assign to WDEH, Inc., was filed on July 30 of that year (1956). Presumptively, the Commission found all of the applications in order. It granted all without question.

To proceed with WLIV, an application to modify the construction permit was filed on August 20, 1956. It was also signed by Crowder. On November 15, 1956, the WLIV license application was filed. It was signed by McCoin.[52] WLIV received program test authority on November 16, 1956, and was licensed on November 26 of that year.

In sum, Crowder left the radio business in Harriman after a ten-year period with WHBT on July 1, 1956. He quit the radio business in Sweetwater after a two-year period on September 5, 1956. He acted as General Manager of WLIV in the preparation of its application (filed on January 23, 1956) and in the pre-broadcast construction phases of the station. This activity ended when WLIV went on the air on November 16, 1956. From that date, for practical purposes Crowder had no further connection with the broadcasting business until late 1961 when he requested permission to build WXXL in Harriman.

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[52] From that point on except for the 1964 purchase by McCoin of Crowder's half-interest for $50,000 (McCoin sold WLIV in 1965 for $130,000), McCoin signed every application concerning WLIV filed with the Commission. Crowder did not even see them, and he did nothing whatever in the operation of this station except upon occasion when asked to advise McCoin. The Examiner found no evidence that Crowder was active in WLIV after it went on theair, and the Commission expressly refrained from resolving the trafficking issue ". . . as it relates to the Livingston station (WLIV)". (R. 1126).

What he did do was purchase in September, 1956, a soft drink bottling plant in Livingston. The business was operated then as it is now with a local manager. In 1958, Crowder enlarged the plant. While he acted as his own "building supervisor",[53] in addition to his manager he had a construction foreman and crews doing the work. The Commission finds such supervisory activity inconsistent with Crowder's 1955 ill health caused by the WDEH employment situation. While it is difficult to follow, the Commission seems to say that Crowder must have lied about his ill health because after he sold WHBT and WDEH he bought a bottling plant business. Thusly, it states:

> "As further indication that the sale of the station (WHBT) was not in fact required by ill health, Crowder at the same time (when he sold WHBT) bought a soft drink bottling plant in Livingston which he personally supervised, spending the mid-week in Livingston".[54] (R. 1122)

It would appear that the Commission feels that if Crowder had become ill in 1955 because of broadcasting problems, he necessarily would have been ill enough to preclude his occupation in any form of business activity. This is illusory logic. Indeed, if, as the Commission appears to insist, Crowder needed corroborative medical testimony to support his evidence of illness, the Commission surely is in need of such medical opinion to support its diagnostic determination. It seems soundly reasonable that Crowder was in a far better position in 1955 to assay the state of his health at that time than is the Commission in 1967 to speculate about it–particularly without any showing of Commission expertise in the medical field or, lacking that, medical corroboration.

By 1961, Crowder had been out of the active radio business for five years–since September, 1956. Harriman still had only one broadcast station and the county in which it is located had but one other. Crowder still owned 100% of the billiard parlor building and two-thirds of the billiard parlor "business". He still owned the bottling plant. His five-year absence from broadcasting had resulted in improved health. He still lived in Harriman (as he does today), and he felt that its residents should enjoy the benefit of choice between local radio facilities. On October 4, 1961, he requested Commission permission to construct WXXL in Harriman to be operated with a power of 500 watts.[55] This is the application which today, more than six years later, is still in issue.

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[53] The words "building supervisor" were Folkways counsel's words, not Crowder's. Crowder said "more or less" in response to a question as to whether he acted as his own "building supervisor". When asked if he supervised the foreman of the crews, Crowder answered, "Well, if you call it supervision, I guess I did". To read into this strenuous Crowder action is undue emphasis resulting in distortion of the contextual meaning of this testimony. (Tr. 300-301, 343-346).

[54] "At the same time" is plainly erroneous. Crowder sold WHBT in July. He bought the soft drink business in September. "Mid-week" is significant. Crowder was at his soft drink plant only part of each week.

VI

Crowder's 1965 Response to Commission Request for Supplementation of His Earlier Statement That Ill Health Motivated His 1956 Withdrawal from Broadcasting in Harriman and Sweetwater Is Not Susceptible to an Interpretation of Ill Health Commencement in 1956.

On December 10, 1962, the owner of the only Harriman broadcast station (Folkways) urged the Commission to deny the Crowder application or to set it for hearing.[56] Among other things, Crowder's responsive pleading filed on January 8, 1963, explained to the Commission that he retired after consulting his physician from active participation in radio more than five years earlier because of his health. He did not explain when he became ill or why. There the matter rested without Commission action until December 17, 1965. On that date, the agency wrote to Crowder, stating:

> "In your opposition (to the Folkways Petition to Deny) you state, *inter alia*, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were a party to an application for a construction permit for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50% partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this mat-

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[55] Under Folkways, WHBT operates with 5,000 watts power. The other Roane County station is WRKH in Rockwood, which operates with 1,000 watts power. Harriman has a population in excess of 10,000. Roane County's population exceeds 41,500. Power-wise, at least, WHBT is the county's dominant station.

[56] It made many allegations (See Footnote 4, *supra*) in support of its effort to maintain monopoly status.

> ter. Such supplemental statement should be served upon the petitioners and their counsel, if any." (R. 309)

Counsel for Crowder prepared the "Supplemental Statement", phrasing its contents for Crowder's affidavit.[57] The document dealt with two matters, Crowder's health when he sold WHBT and WDEH in 1956 and the General Managership proposal contained in the WLIV application filed that same year. As to the former, it was stated:

> "In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation thereof, and for that reason both stations were sold in that year. It was his intention then to withdraw from such activity, and the Commission was so informed.
>
> "In sum, because of the then state of his health Mr. Crowder's last operational activities upon a routine basis in the broadcast field occurred in 1956 before he disposed of his interests in the Sweetwater and Harriman stations." (R. 311)

The Commission now interprets this language as indicating that Crowder's illness commenced in 1956. An objective reading of the pertinent language does not permit such an interpretation. It was intended simply to indicate that Crowder sold WHBT and WDEH in 1956 because of illness, not that his illness commenced in 1956.

During the hearing, Crowder testified as to when his illness started and why. Simply because he placed WHBT and WDEH on the market for sale in June, 1955, did not solve his employee problem at WDEH in Sweetwater. It continued throughout 1955 and at least into 1956. Foster, one of the two less than satisfactory WDEH managers, had a year's contract which Crowder to his credit honored. Foster did, in fact, stay with WDEH through 1955. The statement of Smith made in the 1956 WDEH assignment application confirms unquestionably that this was the case.

The second facet of the 1965 supplemental statement explained that Crowder's brother-in-law McCoin wanted him to join in the Livingston application with a fifty per cent interest.[58] Crowder agreed to do so providing McCoin understood that Crowder would act as General Manager (supervision) only in the preparation of the application and during pre-air operational stage after construction permit grant. Thusly, Crowder would retain legal and engineering counsel, would prepare the application for permission to construct, would prosecute the application (he filed an amendment thereto), and after grant of the construction permit would obtain broadcast equipment and construct the station. After that, Crowder would do nothing except to give occasional advice to McCoin upon request. McCoin as station manager would head the station on a day-to-day operational basis. Crowder told the Commission that use of the term "General Manager" with respect to him in the WLIV application was not intended to deceive or to confuse, and that those words did describe accurately his responsibilities before WLIV went on the air. (Crowder affirmed these statements completely during the hearing.) (Tr. 245-247, 1485-1487, 1514)

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[57] The words used in the Supplemental Statement from which the Commission infers Crowder said therein that he became ill in 1956 are the words of counsel, not Crowder. This in no way, of course, relieves Crowder of the responsibility for the content of the statement. However, the specific phraseology upon which the Commission has seized was not intended to represent *commencement* of illness in 1956. To read it so makes it contrary to all other record evidence.

The Commission was satisfied that the apparent inconsistency about which it had inquired on December 17, 1965, was not a misrepresentation It granted Crowder the construction permit for WXXL on January 12, 1966, stating in pertinent part that:

> "Since there appeared to be an inconsistency between Mr. Crowder's representations in 1956 and in his opposition pleading (to the Folkways petition), which was not explained in the application before use, Mr. Crowder was requested to supplement his pleading in this respect, and has done so. All of the parties have been given an opportunity to respond and have done so. As a result of these recent filings, it is now clear to us that the inconsistencies are more apparent than real. Mr. Crowder did not state in 1956 that illness was the reason for withdrawing from the broadcast business, but his later statement to this effect is not inconsistent with the reason given in 1956 and accepted by the Commission which was that he wanted to quit the broadcast business in Harriman and Sweetwater. His explanation concerning the application for Livingston in that same year and the representation that he would be 'general manager' is also not inconsistent, in the light of his later explanation of the limited duties of that position. Accordingly, we find that no question of misrepresentation had been raised warranting a hearing on the application." (R. 328)

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[58] Since the cost of the station thus would be shared equally by McCoin and Crowder, McCoin's desire to have Crowder join him as a 50% partner is understandable.

At the time of this grant, the Commission had available to it the complete chronology of Crowder's ownership interests and activities in WHBT in Harriman, WDEH in Sweetwater, and WLIV in Livingston. It had in its files the McCoin-Crowder application to construct WLIV at the times that it received and granted the 1956 applications to assign the WHBT and WDEH licenses. It knew from A. D. Smith's 1956 statement in the WDEH assignment application to WDEH, Inc., that Crowder had employee problems at the Sweetwater station and that those problems "had a very bad effect financially on WDEH" (R. 1089). It knew that Crowder's health motivated his desire to withdraw from boradcasting in Harriman and in Sweetwater, and that Crowder had stated in those respective 1956 assignment applications that his purpose was to so retire. It knew what Crowder meant by the use of the term "General Manager" in the WLIV construction permit application, and it knew the limited duties Crowder performed in that capacity as well as when such duties were performed. From the financial data in its files, it knew that from the 1956 sales of WHBT, WDEH and the 1964 sale of his interest in WLIV Crowder made an aggregate gain of $133,805 over an eighteen-year period (calculated upon the basis of sales prices less depreciated asset values). It knew that both WHBT and WLIV were profitable, and that WDEH was not. It knew that McCoin instigated his purchase of Crowder's fifty per cent interest in WLIV, and that McCoin a year later (in 1965) sold WLIV for $130,000 (making $15,000 more on Crowder's interest than he had paid Crowder for it the year before). It knew that McCoin signed and filed every WLIV application and report after that station went on the air, including the 1956 license application. The Commission with full knowledge of all these matters granted the WXXL application.[59]

Perhaps as illustrative as any of the Commission's misreading the record in this case is its statement in the agency decision that:

> "Finally, at the same time (sale of WHBT in 1956) Crowder also entered into a partnership in a new station in Livingston representing to the Commission that he would be its general manager. We are *now* told that the latter representation was incorrect, and that his participation in the Livingston station was therefore not inconsistent with the explanation (ill health caused by employee problems at WDEH)

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[59] As always, Crowder did not request an extension of time within which to complete construction. He built WXXL, and the people of Harriman were given a choice of local stations in August of 1966 when WXXL commenced broadcasting. That choice has been denied them since August 31 of this year when WXXL was forced to discontinue broadcasting by Commission order.

> given for the sale of WHBT and WDEH. We cannot permit an applicant thus to decide as it suits his purpose which of his inconsistent representations we are to believe." (Emphasis supplied (R. 1122)

But this is precisely the same matter about which the Commission inquired of Crowder in its letter of December 17, 1965. On the basis of Crowder's response in his Supplemental Statement, on January 12, 1966, it found the alleged inconsistency to be "more apparent than real" and granted the WXXL construction permit Crowder had requested. On the same facts upon which the Commission found no inconsistency in 1966, in 1967 it finds to the contrary.[60] Its explanation that it is *now* told those facts for the first time during the hearing directly contradicts its own files which contain Crowder's 1965 Supplemental Statement in which those facts are set forth. Furthermore, the agency is wrong when it states that ". . . at the same time Crowder . . ." entered into the Livingston partnership vis-a-vis his sale of WHBT. (R. 1122). The Livingston partnership application was in the Commission's files as early as January 23, 1956. The application for permission to sell WHBT was not filed until May 10, 1956.

VII

The 1955 Placement of WHBT and WDEH on the Sales Market Was Motivated by Crowder's Ill Health Caused by the Employee-Created Financial Condition of WDEH.

Hearing commenced on May 8, 1967, and continued for all or part of eleven days. Primarily, three "new" bits of evidence (evidence other than that contained in the Commission's files since before its January, 1966, WXXL grant to Crowder) were introduced. One such was fixing the approximate point in time that Crowder decided to sell WHBT and WDEH.

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[60] The Examiner's comments upon "inconsistency" are worth noting. He said, "Now, inconsistency in itself is not an actionable vice, any more than consistency is uniformly a virtue: as is well known, consistency has been called both a jewel and the hobgoblin of little minds." (R. 1111) He went on to state that "The age of this case is an immediate barrier to any confident decision that Crowder deliberately tried to mislead the Commission", and he refused to condemn Crowder for representations made so long after the event (even assuming that the Commission's view of them is accurate) to which they refer, and which may be a mistaken reconstruction of an earlier motivation. During the hearing, Crowder was first called as an adverse witness by his opponent Folkways. That examination lasted, except for a few minutes, for a full day. His direct and cross-examination took another two full days. Hence, for the majority of three full trial days Crowder was under intensive and vigorous questioning concerned in the main with events which occurred as early as 1946, dealt with 1950, and concentrated on 1955 and 1956, including inquiries probing his reasons or purposes for his actions over the span of years from 1946 through 1967. The Examiner, of course, was present during the entire hearing process, and being so was in a position to evaluate at first hand the questions and responses in context and manner. Presumptively, it was for this purpose, at least in part, that this Court once remanded the case for trial.

Since he had no independent recollection of the date, Crowder stated: "I will tell you what I will do. I will be willing to take Mr. Marshall's statement. I will take that for the record". (Tr. 213). He did so, and the date of the Marshall contact by Crowder was thusly fixed. The Crowder-brokerage media contracts whereby Crowder placed both WHBT and WDEH on the market both were dated June 22, 1955. Crowder determined that his decision to sell the stations was made the week before.

Secondly, Crowder explained the cause of his 1955 illness thusly (Tr. 1483-1484):

> "Q. Why did you sell it (WDEH)?
>
> A. It will tell you on the form—I don't remember the number—to transfer the license; I wanted to get out of radio business.
>
> Q. Why did you want to get out of radio?
>
> A. May I go back to the time we went on the air?
>
> Q. Yes, indeed.
>
> A. Well sir, I hired a gentleman, as I recall his name was Lee, as sales manager of the radio station.
>
> Q. Which one?
>
> A. WDEH. I will have to say he did a good job before we went on the air; he did a good selling job before we went on the air; the billings were about $5,000 a month, but in about three or four weeks I noted we started losing customers; he quit the advertising business and, naturally, I check to see what the trouble was and I learned the gentleman was more interested in the secretary than the radio station, so I had to dismiss him.
>
> I, in turn, employed another gentleman and he was all right for two or three weeks but then he got involved in local politics. Anyway, unbeknownst to me, he took sides, opposed the City officials. We lost some more customers.
>
> The station kept going down, going down. So in about three months, frankly, I was a nervous wreck. I decided to sell my radio station and get out of the radio business."[61]

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[61] This is wholly consistent with the 1956 statement of Mr. Smith contained in the assignor's portion of the WDEH assignment application from Crowder to WDEH, Inc., *supra*. It is also consistent with the 1956 reasons or purposes Crowder gave for selling WDEH and WHBT; i.e., that he wanted to withdraw from radio in Sweetwater and Harriman at that time.

At this point, then, the Commission knew that Crowder became ill in 1955 because of employee difficulties with WDEH which created a consistently losing operation, and it knew that Crowder had placed both WHBT and WDEH on the market in 1955. It doubtless realized the latter fact from its files as well since the first assignment application to sell WDEH was filed on February 4, 1956.[62]

VIII

The Commission in Finding Credible Burn's Testimony of Alleged 1957 and 1961 Conversations with Crowder Failed To Consider that Such Testimony Is Not Consistent with Its Own Files or with the Testimony of Another Folkways' Witness, that Burn Was an Evasive and an Admittedly Biased Witness, that His Memory for Much More Recent Events than the Alleged Crowder Conversations Was Less than Accurate, and that He Misrepresented His Stock Interest in and Management Positions with the Crosthwait Dominated Company Which Owns Radio Station WOVE in Welch, Virginia.

Thirdly, in a further attempt to fix an "intent" to traffic in Crowder's mind more than a decade before the 1967 hearing, Folkways utilized the testimony of one Harry Burn,[63] the presiding head of the First National Bank and Trust Company (a commercial banking institution with main offices in Rockwood and branches in Harriman and Kingston). This bank filed, simultaneously with Folkways in 1962, a petition to deny Crowder's

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[62] As in all such applications then and now, a part thereof as an exhibit is the contractual agreement between buyer and seller as to the assets to be assigned, the terms, non-compete understandings, and the like. As a practical matter, such contracts require negotiation, and such give and take occurs generally before either the proposed assignor or assignee undertakes the task of completing the necessary assignment of application form. All this takes time, making it rather obvious that in the case of this WDEH assignment application, which contained a purchase contract dated January 18, 1956, negotiations between the two parties must have started at least weeks before the contract date. This would place the market date back to 1955.

[63] The Commission seemingly discounts Burn's testimony as being of decisional significance in its evaluation labors, but nonetheless after a full recitation thereof, it refuses to discount it, saying "Although the record shows that Burn was not a disinterested witness, since his bank still held a WHBT note which it had purchased from Crowder, and had opposed Crowder's application . . ., it does not follow that his testimony must be rejected on that ground, for the facts taken as a whole are consistent with Burn's testimony". (R. 1126). Burn had much more reason to favor Folkways that this Commission statement would indicate. For example, Burn is a current business partner of Crosthwait (Folkways' principal stockholder) in another radio station business in West Virginia. He is also a lender of funds (via his bank) to Crosthwait personally, *ante*. Crowder never favored Burn with his banking business.

WXXL application which the Commission dismissed for lack of standing.

Burn testified that before he had any business dealings with Crowder, he knew him "socially, casually". (Tr. 370). About fifteen years ago, Burn's bank leased space to WHBT (then Crowder owned) for a remote studio in Rockwood. (Tr. 369-370-377). Burn did not remember the term of the lease. (Tr. 377). He stated that he saw Crowder in the bank building (in Rockwood) every few days and ". . . visited with him occasionally, more socially than business, of course, but I kept contacts with him". (Tr. 378). He considered himself ". . . a friend of Mr. Crowder's . . . he is my customer". (Tr. 432). (Although the point was in dispute, Burn produced no bank records or documents which would indicate that Crowder ever was a "customer" of Burn or his bank.) He also testified that in the last ten years he guesses he has had conversations with Crowder twenty times, and that one such conversation occurred ". . . in April or May of 1957 . . . in the front lobby of the bank (in Rockwood) . . . in the morning about 10 o'clock". (Tr. 379, 431). During this conversation, so said Burn, Crowder told him that "you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, by implication anyway, you had to, to do it, through a subsidy, and then selling the station". (Tr. 379).[64] It was during this conversation, Burn testified, that Crowder referred to McMinnville, Tennessee, as an example of ". . . virgin territory, a small town that had no station, to get you a license and franchise and, as I say, build it up." (Tr. 380).[65]

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[64] This conversation, according to Burn, occurred in 1957. Yet in 1955, WHBT under Crowder's operation made a net profit before taxes of $18,090.71. WLIV, under McCoin, was grossing sufficient monies to pay to Crowder from $5,000 to $6,000 annually for doing little (McCoin also was drawing this amount plus a salary for managing the station). It will be recalled also that in 1954, on the advice of his accountant for tax purposes pertinent to ordinary income (not capital gain), Crowder converted his radio holdings from corporate form to himself individually.

[65] At the time of this alleged 1957 conversation, McMinnville had been enjoying its station WAKI since 1947. This community's second station (WBMC) went on the air on May 1, 1955. Crowder knew this. He testified that "McMinnville, Tennessee, has two radio stations . . . one (of which) was constructed before the one at Harriman talking about WHBT virgin territory". (Tr. 1502). Burn also stated that this conversation with Crowder occurred when the Rockwood station (WRKH) was started by "some financial interests from McMinnville" and "about that time . . . Crowder was either selling or negotiations had some existent status (to sell) WHBT, and I believe the new station at Sweetwater" (WDEH). (Tr. 378-379). The Rockwood station was placed on the air on May 12, 1957. Crowder had sold both WHBT and WDEH the year before. The Commission fails completely to evaluate this obvious Burn memory fault.

Sometime after December 10, 1962, (the date Burn's bank filed its petition to deny Crowder's WXXL application), Burn, according to Burn, had another conversation with Crowder about the radio business. Therein, said Burn, Crowder explained to Burn that Crowder filed for Harriman (instead of "virgin territory") because WHBT under Folkways' management ". . . would ultimately create a serious financial problem and that he (Crowder) wanted WXXL to be in position to fill the void." (R. 1125). Crowder allegedly said he felt this way mainly because of tube cost at WHBT and the change of WHBT "on the dial". (Note Burn's attempts to lend credence to his testimony with false representations as to the WOVE, Inc., minutes and Mrs. Crosthwait's "office" in that company, *ante*). Burn admitted that at any of the conversation with Crowder to which he testified no one was present except the two of them. (Tr. 378, 380, 382).

Crowder several times emphatically denied that he had made the statements to which Burn referred, or that he had ever talked to Burn about his views on radio station ownership. For one example, he testified in response to a question by Folkways' counsel as follows:

> "Q. As the reasons given for selling stations, I put it to you, sir, that the reason you sold the stations here involved was in furtherance of a plan you had previously adopted and, in fact, discussed with Mr. Harry Burn was that the way to make money in radio stations was not by operating radio stations, but by building the ratings up and selling them, was that not the reason?
>
> "A. I deny that 100 percent." (Tr. 351).

Crowder also testified as to his relationship with Burn, stating (Tr. 1494-1495):

> "A. Mr. Bilger, I have had *two business dealings*[66] with Mr. Burn in my life. That was in 1953 when I signed the lease for the studios and in 19__, I mean 1961, when Mr. Crosthwait called me to the Rockwood bank, he wanted to get that note I held on WHBT, and that is my business dealings with Mr. Burn, and Mr. Burn is not a friend of mine. He is not my banker. We don't attend the same church. Politically, we are on different sides of the fense. (Emphasis supplied).

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[66] This phraseology is of considerable importance. The Commission views this as meaning that Crowder testified ". . . categorically that he met with or talked with Burn only twice in his entire lifetime, once when he signed the lease for the remote studios in the 1950's, and again in 1961 when he sold his WHBT note to Burn's bank." (R. 1126).

> When I was called to the bank that day (the day in 1961, the Crowder-held note from his sale of WHBT in 1956 was bought by Burn's bank), that is the first time I had seen the man (Burn) in five years.
>
> * * *
>
> Q. I don't know if the record is clear on this or not. How frequently, since 1956, have you spoken with Mr. Burn?
>
> A. Mr. Bilger, as I told you a few minutes ago, from 1956 to the day I met Mr. Crosthwait in Rockwood (1961) was the first time I had seen the man in five years.
>
> Q. Now, after you met him in Rockwood, when he bought the note about which you talked, up until today, have you had any conversations with Mr. Burn?
>
> A. I have not. No, sir. As a matter of fact, I have seen the man twice since 1961, and once was at a political meeting in Harriman I spoke to him, just 'Howdy, Mr. Burn,' and that was it. The other time was in this room.
>
> Presiding Examiner: His statement that he tried to keep up his contacts with you – and I am paraphrasing – what about that?
>
> A. I don't know anything about any contacts, your Honor. As I say, Mr. Burn is not a friend of mine and had no reason to contact me." (Tr. 1499-1500).[67]

Crowder explained in response to an inquiry by the Examiner that the political meeting (apparently non-partisan) at which he met Burn was one wherein the Tennessee Governor and its senior Senator were present (Tr. 1500-1501). Crowder also testified that he was at the WHBT remote studio in Burn's bank on one occasion during "*the actual conduct of a remote broadcast*" from that location (emphasis supplied). (Tr. 1711).[68] In short, other than once leasing remote studio space in Burn's bank building in 1953 and the Burn purchase in 1961 of the WHBT note (*ante*) Crowder had utterly no relationship with Burn – social or otherwise.

The foregoing paragraphs recite the nub of the difference between the testimony of Burn and Crowder as to events which occurred many years before the 1967 hearing. The Commission apparently has chosen to accept at face value Burn's recitations.[69] The Hearing Examiner, on the other hand, believes that:

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[67] The Hearing Examiner found that Burn's ". . . professions of friendship for Crowder are suspect in light of his (Burn's) testimony". (R. 1109).

[68] These words also are of importance in view of the Commission's interpretation of the record as to the number of times Burn and Crowder have met and talked. (See Footnote 66, *supra*).

> "... the chances are that on closer inspection the details are too well remembered for credibility by one of the supposed speakers (Burn), and that his recollection is so selectively retentive as to impugn the value of the specific testimony. Thus, if Burn is to be exposed to the same niggling inspection to which Crowder has been subjected, it may be observed that he had an imperfect memory of his own immediate affairs (interest in WOVE), but gave what purported to be veristic accounts of the Crowder talks down to details of station authorization.
>
> * * *
>
> Burn would have Crowder stand on the same level as a corporate raider continually on the prowl, as if Crowder made if a practice to acquire and sell out of hand. But in light of Crowder's actual experience, the alleged vaunting of his buccaneering tactics could only be regarded as a pathetic exaggeration". (R. 1110).

Who is this man who has such an exceptional memory for long past events which for him at the time of alleged occurrence must have been only casual at best, but who is unable to remember more recent events which relatively are of greater personal significance to him? This question bears answering.

Harry Thomas Burn has lived in Rockwood, Tennessee, for some sixteen years. His principal occupation is banking. Although he maintains a law office in his bank building in Rockwood, he does not practice the law. He and his family control the First National Bank and Trust Company, a commercial banking institution with principal offices in Rockwood.

Burn's bank has never been used by Crowder nor has it loaned one penny to Crowder or to any enterprise in which Crowder had an interest, although Burn referred to Crowder as his "customer". In 1956, however, his bank did loan funds to the individuals who purchased WHBT from Crowder, Burn testifying that "... during the time that those two men

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[69] Although the Commission recognizes that Burn is "... not a disinterested witness" and that Burn "was vague as to the date of the principal conversation in which he says Crowder expressed his philosophy of buying and selling stations", it also concludes that Burn's testimony "... cannot be wholly rejected ...". (R. 1126). The agency, however, wishes it to be clear that Crowder failed to carry his burden without regard to the Burn testimony. Whether this means that the Commission disregarded the Burn statements in its decisional process or accorded to his testimony some decisional significance is not ascertainable from the agency's opinion. This lack of clarity places an unfair burden upon Crowder inasmuch as he must try to guess the Commission's total reasons for the decision it reached.

(Messrs' Snow and Tubbs) were the essential stockholders (of Folkways) I had financial dealings with them". (Tr. 384-385). (Note Burn's use of the term "financial dealings" vis-a-vis Crowder's use of the term "business dealings" – see footnote 66, *supra*). Burn knew Crosthwait some years before Crosthwait came to Harriman as an employee (assistant manager) of Folkways in 1957 (Folkways then was owned by Snow, McDaniel and Tubbs). His bank had loaned funds and advanced lines of credit to Crosthwait in order for Crosthwait to purchase 100% ownership of Folkways.[70] Over the years since 1960, Burn's bank has continued to lend money to Crosthwait and has twice re-financed Folkways since 1961, advancing between $50,000 and $60,000 to Crosthwait and his associates. Folkways' present debt to Burn's bank is in excess of $23,000, and that bank is committed to lend Folkways up to $15,000 more to construct an FM station in Harriman. In 1961, Burn's bank petitioned the Commission to deny Crowder's application for WXXL in Harriman. Burn bluntly admitted that he wanted to prevent the establishment of WXXL in Harriman because, as a lender of money to Folkways, he wanted to protect it from competition.[71] (Tr. 383, 392, 400-401, 405-408, 444, 465, 475)

Burn also is in the radio business with Crosthwait. Not only has his bank loaned money on a personal basis to the principals of WOVE, Inc., to acquire Station WOVE in Welch, West Virginia, and assisted the corporation itself in its financing, but Burn is the second largest stockholder in that entity. (Crosthwait owns 68-2/3 interest and Burn holds 16-2/3.) Burn is also the corporation's secretary-treasurer and is a director. He has held such offices and ownership interest since the company was formed in 1963. (Tr. 408, 410-411, 413-418, 430, 439, 440-443, 475)

Burn's interest in Crosthwait and Crosthwait's enterprises as set forth above is not now disputed, being for the most part contained in the Commission's files. Yet, the agency ignores the closeness of the Burn-Crosthwait association and its ramifications over the years, choosing to rest its rather bland statement that Burn is not a disinterested witness upon two other factors:

> "Although the record shows that Burn was not a disinterested witness, since his bank still held a WHBT note which it had purchased from Crowder, and had opposed Crowder's appli-

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[70] Burn denied that he loaned money to Crosthwait to buy WHBT. Crosthwait, however, testified that he had done so. This was one of several inconsistencies between the narrations of Burn and Crosthwait, both Folkways' witnesses. (Tr. 388, 785)

[71] Burn also was opposed to the establishment of WRKH in Rockwood. (Tr. 432-433)

> cation, it does not follow that his testimony must be rejected on that ground. . ." (R. 1126).

The Commission accepts at face value Burn's testimony, except for stating that Burn was "vague" as to the date of the principal conversation in which he says that Crowder expressed his philosophy of buying and selling stations (Burn fixed this date as February or March of 1957 in the bank building lobby in Rockwood at 10 o'clock in the morning). In doing so, it failed to consider Burn's persistent evasions and indisputable inaccuracies. It did not take into account, for example, that Burn testified Crowder approched him in 1957 to sell the purchase money note Crowder had held since he sold WHBT to Snow and Tubb (in the corporate identity of Folkways) in 1956 (Tr. 385-386). Crowder testified that this simply was not so, that he was perfectly happy to hold the note, that in 1961 Crosthwait, as the principal stockholder of Folkways, asked him to bring the note to Burn's bank for purchase by the bank, that since the note had a right of pre-payment clause running to Folkways he had no choice but to sell the note, and that he and his wife met Crosthwait in Burn's bank in Rockwood where that transaction was accomplished. Contradicting Burn, Crosthwait confirmed Crowder's testimony in every detail. He testified that he had instigated the note purchase in 1961 by contacting Crowder to ask that Crowder release the note upon payment, that he did ask Crowder to meet him at Burn's bank for that purpose, and that Crowder did so. Burn had also denied that Crosthwait was present in the bank when the note was purchased from Crowder.[72] (Tr. 399, 777-787, 1257-1258, 1495-1497)

As the Examiner found, Burn had a selective memory. While he recalled with relative preciseness two alleged conversations with Crowder said to have occurred in 1957 and in 1961, he did not remember:

1. That his bank bought the WHBT note from Crowder in 1961 (the actual date was May 2, 1961) (Tr. 389):

> "Q. When did you purchase the note?
> A. About 10 years ago.
> Q. In 1961, wasn't it?
> A. That would be six years ago.
> Q. It would be.
> A. The record will speak for itself."

---

[72] The note was generating $835, plus interest, monthly for Crowder, and payments had always been made regularly. This too would seem to be corroborative of Crowder's testimony that he did not try to sell the note to Burn's bank and did so only because Crosthwait invoked the prepayment clause. Further, since Burn was not Crowder's banker, it would seem strange that Crowder would try to sell the WHBT note to Burn in any event.

2. That the face value of the WHBT note was $70,000 (Tr. 386, 391):

> "Q. And did you buy the note, then discount the note directly from Mr. Crowder?
>
> A. Yes.
>
> Q. What was the discount price?
>
> A. Well, of course, the loan I took at its face value and it was between 20 and 25 thousand dollars.
>
> * * *
>
> Q. Is it not a fact, Mr. Burn, that the face value of the note was $70,000?
>
> A. $70,000.
>
> Q. Yes.
>
> A. And it had been paid down to $23,000.
>
> Q. I am asking you if it is not a fact it was $70,000.
>
> A. I don't recall."

3. That he is (and was from the beginning in 1963) a director of WOVE, Inc., the licensee of WOVE, Welch, West Virginia, the Crosthwait corporation (Tr. 408):

> "Q. Are you a director (of WOVE, Inc.)?
>
> A. I don't think so. I may have been to start with but on on account of self-dealing, I don't think I am a director now."

4. That he is (and was from the beginning) an officer of that company (Tr. 408):

> "Q. Are you an officer?
>
> A. No, I don't know that I ever had stock in my own name."

6. That he still holds the stock certificates and is still in fact the owner of the stock in WOVE, Inc., that the certificates represent[73] (Tr. 408-409):

> "Q. Did you have the stock in someone else's name?
>
> A. My son may own stock in it.
>
> Q. Does he?
>
> A. I think so.
>
> Q. How much does he own?
>
> A. Whatever the 17 percent is.
>
> * * *
>
> Q. Is it your testimony that your son owns stock in it and not you?

---

[73] The Commission's files show that he owns 16-2/3%.

A. I think that is correct. I think the stock is in his name or at least part of it.
Q. Did you pay for it?
A. Yes."

Even when shown a portion of the Commission's WOVE files dated August 2, 1963, in which Burn certified a copy of the WOVE, Inc., by-laws as its "duly elected secretary-treasurer", Burn continued his misrepresenations, saying (Tr. 410):

"A. This was entirely correct at the time.
Q. Thank you.
A. Wait a minute. Let me finish.
Presiding Examiner: That was dated August 2, 1963. What is the situation now?
A. Mrs. Crosthwait is the secretary.
Presiding Examiner: You are no longer an officer, as I gather.
A. That is correct.
Presiding Examiner: – or a director in WOVE, Inc.?
The Witness: I don't know about being a director, but I don't think so. *The reason I severed my connection was that if I ever wanted to loan money to them I couldn't loan it and be a director.*" (emphasis supplied).[74]

Burn persisted in his evasiveness. He continued to testify, when shown the Commission's file pertaining to the WOVE assignment of license application received by the agency on August 22, 1963, as follows (Tr. 411):

"Q. You are listed (therein), are you not, as secretary-treasurer of WOVE, Inc.?
A. I was at the time of the organization (1963).
Q. You are also listed as a director.
A. Yes, I was then.
Q. You are also listed as holding 16 and 2/3 percent of the stock.
A. I said 17 percent a while ago.
Q. Does that record say 16 and 2/3 percent?
A. It does.
Q. If I am misstating anything, you are looking at the table (in the Commission's file), you correct me.

---

[74] As will be seen *ante* this is a direct misrepresentation. The fact is that Burn was a director of WOVE, Inc., from its inception and has held the office of secretary-treasurer from that date to this. Furthermore, he at no time divested himself of his original stock interest in that company, his representations of giving his stock to his son notwithstanding.

A. The only thing, this is the story as of that date (August, 1963) and it is not correct as of now."

Finally, Burn began to change his testimony, but only as to his stock ownership and his directorship. He admitted that he still owns his 16-2/3 share of WOVE, Inc., and that he is still a director. As to his officership, however, he still insisted that Mrs. Crosthwait occupied the secretary-treasurer position Burn once held (Tr. 414-415):

> "Q. Has there been any change in your status as an officer of this company (WOVE, Inc.) since August 22 (1963)?
>
> A. I am not secretary-treasurer, Mrs. Crosthwait is.
>
> * * *
>
> Presiding Examiner: On what do you base your belief that you are not now an officer of WOVE, Inc.?
>
> A. *Because I have seen certified minutes of meetings signed by Mrs. Crosthwait as secretary.*" (Emphasis supplied).[75]

Later during his testimony, Burn again referred to the election of Mrs. Crosthwait as the secretary of WOVE, Inc. (Tr. 439-440):[76]

> "Q. Did there come a time when Mrs. Crosthwait was elected to the position of secretary of the corporation?
>
> A. Yes.
>
> Q. Do you recall when that was?
>
> A. No. The minute book will show it. That is in Welch, West Virginia.
>
> Q. I understand. And you don't know who would have taken the position of treasurer of the corporation?
>
> A. No, unless Mr. Crosthwait did."

---

[75] This is a second direct misrepresentation, and is still another illustration of Burn's inclination to lend veracity to an untruth by reference to what would appear to be a supporting event or incident. Burn did the same thing when volunteering his reason for not being a WOVE, Inc., director. See Footnote 74, *supra*.

[76] During a luncheon recess, counsel for Folkways in his office showed Burn "... some file copies of WOVE, Welch, West Virginia". In connection with his testimony that he had seen WOVE minutes signed by Mrs. Crosthwait as secretary of WOVE, Inc., Burn testified after the noon hour that "I was confused about that. It was WHBT". The fact reamins that Burn was as positive about these errors as he was about Crowder's alleged conversations in 1957 and 1961. He also referred to other events as corroboration then – such as the McMinnville virgin territory matter, WHBT's changed position on the dial, radio tube cost, and the advent of WRKH in Rockwood. Burn was wrong about WOVE. He was wrong about Crowder.

Burn finally was forced to admit after being shown the Commission's current files as to the corporate status of WOVE, Inc., that he *is* a 16-2/3 stockholder, that he *is* a director, and that he *is* that corporation's secretary-treasurer. He qualified even that, however, by stating in mitigation that he was what "lawyers call a dummy director", and that he was not active in WOVE, Inc. (Tr. 441-442). As to his stock, he finally admitted that he has not endorsed the certificates to anyone, and that he keeps the certificates in his safe deposit box. When asked if he made a gift of the stock (since he earlier testified that he thought he had given the stock to his son), he answered, "I have not done that". (Tr. 440).[77]

This, then, is Burn. He is a money lender who desires above all else to protect the repayment possibilities of Folkways which now owes his bank more than $23,000. He not only does business with that company as a banker, but he is personally in the radio business in another community with Crosthwait, Folkways' principal owner. He is his friend as well. He tried in 1962 to prevent a Commission grant to Crowder of WXXL, and he is trying again in 1967. There is no question of this man's interest in seeing that Crowder is not granted a station in Harriman which would compete with the Folkways' monopoly (Burn did not even want to see the Rockwood station established). Even the Commission concedes that point. What the agency does not acknowledge is more important, however. It ignores Burn's statements which are in complete disagreement with its own files. It ignores Burn's statements which are at odds with the testimony of Crosthwait. It ignores Burn's statements relating to his association with Crowder despite the inherent improbability of such a relationship. It ignores the fact that Crowder would have no earthly reason to talk to Burn upon an intimate basis (wherein Crowder, a broadcaster, would admit that he was a trafficker in licenses) at any time much less in 1957 after Crowder had sold WHBT in Harriman and was in no way further connected with Burn's bank even as a lessee of remote studio space. It ignores the fact that Burn could not remember when the WHBT remote studio lease was signed, or the term thereof. It ignores the fact that Burn testified Crowder and his wife tried to sell the WHBT purchase money note to Burn's bank in 1957, although the evidence is clear that Crowder never was a customer of Burn's bank, was satisfied with the note, and did not want to sell it in 1961. It ignores the patent need for reasonable corroboration of Burn's testimony, finding no significance whatever in Burn's admission on cross-examination that at the two alleged Crowder conversations no one was present but the two of them, and that Burn could not remember even the year of the alleged second one. It ignores Burn's demonstrated evasiveness and his proneness to lend an aura of probability to his misrepresentations by reference to other events (such as seeing the WOVE minutes wherein Mrs. Crosthwait was secretary and knowing he was not a director since he then couldn't lend money to WOVE) which, in turn, never happened. This man, the Commission finds, is a credible witness.

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[77] Indicative also as to how wrong Burn was in other aspects of his testimony, he once testified Welch, West Virginia, is located 500 miles from Rockwood, Tennessee. Later, he testified that it was 600 miles. Both Crosthwait's testimony and the map prove him to be grossly in error. The distance is less than 250 miles. Burn also testified that in his opinion the economic status of WRKH in Rockwood was not good. Crosthwait, on the other hand, testified that the owner of WRKH told Crosthwait recently that business was good. (Tr. 414-415, 417-418, 777, 840-843)

CONCLUSION

For all the reasons set forth above, this decision should not be permitted to stand. While Commission policy has vacillated over the years in its disposal of trafficking allegations, it has never before gone this far afield. To permit its decision to stand upon the paucity of evidence in support contained in this record would be not only grossly unfair to Crowder, but would permit the placement of a precedent in the agency decisions with which no broadcaster could reconcile his record. Any license assignment or transfer could be attacked, if this case stands, on trafficking grounds under the foot-in-door approach of a *Carroll* issue with probable success, since it is most unlikely that any broadcaster is immune from application mistakes in the many ones required of him over the years.

The Court is urged to reverse the Commission's denial of the WXXL construction permit on the trafficking issue, and to remand this matter to the agency for its determination of the economic injury issue.

Respectfully submitted,
DONALD E. BILGER
1101 - 17th Street, N. W.
Washington, D. C. 20036
Counsel for Appellant

Of Counsel:
Smith, Pepper, Shack & L'Heureux
Washington, D. C.

October 27, 1967

APPENDIX

CHRONOLOGY

Crowder has had interests in only three broadcast stations – WHBT (Harriman) from 1946 to 1956, WDEH (Sweetwater) from 1954 to 1956, and WLIV (Livingston) from 1956 to 1964. Pertinent dates are listed below.

1946	Harriman Broadcasting Company, inc., composed of local businessmen, requested Commission consent to construct WHBT in Harriman. Crowder owned 16.66 percent of this company.
1947	WHBT commenced broadcasting.
1948	Crowder appointed WHBT General Manager.
1949	Crowder sold a one-third interest in a billiard parlor business which he had owned since 1944.
1950	On August 16 at instigation of other stockholders, Crowder purchased their stock interests in Harriman Broadcasting Company for $20,000. In the application for Commission approval for the stock transfer, under "other business interests" Crowder was listed as owner of the billiard parlor, whereas he only owned 100% of the building in which it was (and is) located and 2/3 of the business itself. The "business" was valued at $5,000. The building was valued at $20,000.
1953	Commission approved Harriman Broadcasting Company's application to construct an FM station in Harriman. Construction commenced. WHBT rented remote studio in Burn's bank building. Lease term was three eyars.
1954	WHBT antenna system improved at cost of $2,047.
	Commission approved Harriman Broadcasting Company's application to construct WDEH in Sweetwater. Construction commenced.
	Fire destroyed FM building and transmitting equipment. Construction permit returned to Commission on December 7.
	Commission approved assignments of WHBT and WDEH franchises to Crowder individually based upon Crowder's tax-instigated ap-

plication. Assignments consummated on Decmeber 31. Harriman Broadcasting Company, Inc., dissolved.

1955 One Lee hired by Crowder to be operational head of WDEH. Construction completed and broadcasting started on February 4.

WDEH not financially successful. Lee replaced by one Foster in mid-March.

WDEH continues to be financially unsound under Foster. Crowder becomes "a nervous wreck", consults physician, and in mid-June decides to withdraw completely from broadcasting in Harriman (WHBT) and Sweetwater (WDEH).

Listing agreements to sell WHBT and WDEH signed on June 22 by Crowder with Blackburn-Hamilton, a media brokerage firm.

Operation of WHBT under Crowder and WDEH under Foster continues.

1956 McCoin, Crowder's brother-in-law persuades Crowder to provide 50% of the funds needed to build radio station (WLIV) in Livingston. Crowder agreed to be a 50% partner, but only on condition he would do nothing after station went on the air. Application, listing Crowder as the proposed "General Manager" and McCoin as the proposed "Station Manager" filed with the Commission on January 23.

On February 4, application to assign WDEH to Marto Broadcasting was filed with Commission. As his reason or purpose for requesting the assignment, Crowder said he wished to "withdraw from the broadcasting business in Sweetwater at this time".

Commission granted the WLIV application on May 3. Construction commenced.

On May 10, application to assign WHBT to a Blackburn-Hamilton produced buyer was filed with the Commission. Crowder gave as his reason or purpose for requesting the assignment that he "wished to withdraw from the broadcasting business in Harriman at this time".

After Commission approval, WHBT sold on July 1.

For reasons connected only with Marto, that assignment application (WDEH) was withdrawn on July 25.

On July 30, a second produced agency buyer (WDEH, Inc.) requested Commission permission to purchase WDEH. Crowder again gave as his reason or purpose for requesting the assignment his wish to "withdraw from the broadcasting business in Sweetwater at this time".

In August, Crowder requested permission to increase the power of WDEH from 500 to 1000 watts.

WDEH sold to WDEH, Inc., on September 5. Crowder purchased bottling plant which he operated with local manager.

WLIV commenced broadcasting on November 16. Crowder totally inactive acter that date.

1957 Burn's alleged conversation in April or May about 10 a.m. in lobby of bank building in Rockwood.

1961 On October 4, Crowder requested permission consent to build WXXL in Harriman.

Burn's bank purchased the Crowder note for Crosthwait in May.

1962 WHBT and Burn's bank opposed Crowder's application for WXXL on December 10.

1964 On May 11, Commission granted McCoin's request to purchase Crowder's interest in WLIV.

1965 On December 17, Commission asked Crowder to explain the WLIV General Manager proposal made on January 23, 1956, in light of his illness which instigated the WHBT and WDEH sales.

Crowder explained that the term "General Manager" did describe his duties accurately from January, 1956 when the Livingston WLIV application was filed until the station went on the air on November 16 of that year, that he was not active after that date, and that use of "General Manager" was in no way intended to deceive or mislead.

1966 On January 14, the Commission granted a construction permit for WXXL finding that the apparent inconsistencies about which it had inquired of Crowder on December 17, 1965, were "more apparent than real". Construction commenced.

The WHBT licensee (Folkways) filed a Notice of Appeal in this Court on February 11.

WXXL commenced broadcasting on August 12.

1967 An eleven-day hearing occurred during May. Initial Decision released on July 3. Commission reversal of Hearing Examiner occurred on August 8. WXXL went off the air on August 31.

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC - 1967

Nathan J Paulson
CLERK

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21222

F. L. CROWDER, TR/AS HARRIMAN BROADCASTING COMPANY,
APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

FOLKWAYS BROADCASTING COMPANY, INC., INTERVENOR

ON APPEAL FROM A DECISION OF THE FEDERAL COMMUNICATIONS COMMISSION

HENRY GELLER,
General Counsel,
JOHN H. CONLIN,
Associate General Counsel,
LENORE G. EHRIG,
EDWARD J. KUHLMANN,
Counsel,
Federal Communications Commission,
Washington, D.C. 20554.

STATEMENT OF QUESTION PRESENTED

It is the view of the appellee and the intervenor that the issue as formulated by appellant is incomplete and inaccurate in both factual and legal premises, and the appellee and the intervenor believe that the issue presented by this appeal more properly should be stated as follows:

In an earlier decision involving appellant's application this Court held that:

> "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than servicing. There may be a basis for reconciling the inconsistent representation [to the Commission] in a manner which prevents disqualification of Crowder, but the subject [needs] examination at a live hearing."

Is the Commission's decision entered after such hearing denying appellant's application under the grounds that he failed to reconcile his inconsistent representations and had not met his burden of proof on the trafficking issue supported by substantial evidence considered in light of the entire record?

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Powell Crosley, Jr., 3 Pike & Fischer, R.R. 6 (1945) ---- 7, 8

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ON APPEAL FROM A DECISION OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This appeal is filed pursuant to Section 402(b)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b)(1). Appellant seeks review of a decision of the Commission which denied his application for a new standard broadcast station in Harriman, Tennessee (R. 1117–1129). It is believed that a more complete and objective statement of the case than that appearing in appellant's brief will be useful to the Court. Accordingly, the following counterstatement is submitted.

The Commission's hearing in this case was initiated when this Court directed the Commission to explore, *inter alia*,[1] "whether Crowder has engaged in trafficking of broadcast authorizations, and whether grant of [his] present application would create another opportunity for such trafficking, inconsistent with the public interest." *Folkways Broadcasting Company, Inc.* v. *Federal Communications Commission,* — U.S. App. D.C. —, 375 F. 2d 299 at 301.

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[1] Appellant F. L. Crowder applied to the Federal Communications Commission for a permit to construct a new standard broadcast station at Harriman, Tennessee. Folkways Broadcasting Company, Inc., the licensee of AM station WHBT in Harriman, petitioned the Commission to deny Crowder's applica-

Pursuant to the Court's mandate, the Commission designated the Crowder application for an expedited hearing placing the burden of proof with respect to the trafficking issue on Crowder. As a result of subsequent orders, the record of the hearing was certified to the Commission along with an initial decision of the Hearing Examiner restricted to the trafficking issue. After oral argument, the Commission substantially adopted the Examiner's findings but rejected his conclusion that Crowder had not engaged in trafficking in broadcast authorizations for the reason that proper weight had not been given "to relevant and material evidence of record bearing on the question of trafficking, and that undue emphasis had been placed on certain facts, while others of equal or greater significance [had] not been given proper consideration" (R. 1119).

Based upon its consideration of all of the facts of record, the Commission reached the conclusion (1) that Crowder had failed adequately to reconcile the inconsistent representations contained in this record concerning his sale of standard broadcast stations WHBT in Harriman, Tennessee, and WDEH in Livingston, Tennessee, and (2) that he had treated stations WHBT and WDEH "as properties to be bought and sold at a profit rather than as facilities reasonably to be devoted to serving the public" (R. 1119). The Commission pointed out that Crowder is here seeking a station in Harriman, Tennessee, where he had previously operated WHBT. It noted that if Crowder's primary interest had been to operate a station in Harriman, "the normal course would have been to continue the operation of station

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tion and alternatively to designate it for hearing on a number of issues, including trafficking. On January 14, 1966, the Commission without a hearing granted the Crowder application. Folkways appealed and this Court, on January 5, 1967, remanded the case to the Commission for an evidentiary hearing on the *Carroll* issue (*Carroll Broadcasting Co.* v. *FCC*, 103 U.S. App. D.C. 346, 258 F. 2d 440) and in regard to the allegations of trafficking. The Commission's decision did not reach the *Carroll* issue, however, since it was unable to conclude on the basis of the facts and circumstances elicited under the trafficking issue that a grant to Crowder would serve the public interest.

WHBT, not sell it at a profit and then seek another license" (R. 1121).

Crowder became the owner of WHBT on April 24, 1950, serving as its General Manager and taking an active part in its day-to-day operations (R. 1085). He commenced operating WDEH in February 1955 (R. 1086). On June 22, 1955, Crowder engaged Blackburn-Hamilton, media brokers, to sell WHBT and WDEH (R. 1087). A contract to sell WDEH for $52,000 was signed July 24, 1956 and approved by the Commission on September 5, 1956 (R. 1088). During the same summer that WDEH was sold, the Commission approved on July 1, 1956 the sale of WHBT for $80,000 (R. 1088). Thus, Crowder showed a profit of $61,350.48 from the sale of WHBT and a profit of $22,504.90 from the sale of WDEH (R. 1094).

The Commission's application form seeking consent to a proposed assignment asks the seller to state specifically his reasons for sale. Crowder stated in 1956, in connection with both WHBT and WDEH, that he "desire[d] to withdraw from the broadcast business" (R. 1088, Tr. 241).

While Crowder was trying to sell WHBT and WDEH, he and his brother-in-law, Reubin H. McCoin, formed a partnership to operate a new standard broadcast station at Livingston, Tennessee (R. 1089). In the Livingston application which Crowder and McCoin filed with the Commission, Crowder stated that he was a broadcaster of experience and would be the station's general manager (R. 1089, Tr. 246, 247, 1718). At the hearing held herein, however, Crowder testified that this was an incorrect statement. He explained that he had an agreement with McCoin to assist in getting station WLIV on the air, but once that was accomplished, he intended thereafter to serve only in an advisory capacity and not to participate in the day-to-day operation of the station (R. 1089, Tr. 1485, 1716–1717).

Additionally, in 1956, the year Crowder sold WHBT and WDEH and received the license for WLIV, he bought a 7-Up Bottling Plant in Livingston, Tennessee (R. 1091). As of September 1956, Crowder had bought a home in Livingston, Tennessee, was the active manager of his 7-Up Bottling Plant there, and was a partner and general manager of Livingston's new standard broadcast station, WLIV (R. 1089, 1090, 1091).

Late in 1961 Crowder applied for a new standard broadcast station to be constructed in Harriman, Tennessee. In December 1962, Folkways Broadcasting Company, Inc., licensee of WHBT, the existing station in Harriman, filed a petition to deny the Crowder application. In an opposition to this petition to deny, Crowder for the first time stated that he had sold his broadcast interests in 1956 because of ill health. On December 17, 1965, the Commission noted this apparent inconsistency and addressed a letter to Crowder:

> "In your opposition you state, *inter alia*, that you sold your two radio interests in 1956 because of ill health; however, our records indicate that at about that same time you were party to an application for a standard broadcast station in Livingston, Tennessee, in which you were listed as a 50 percent partner and proposed general manager. In view of the apparent inconsistency between the statement referred to above and the representations contained in the two applications for assignment of license and in the application for Livingston, you are requested to supplement your opposition pleading with a further statement concerning this matter * * * " (Tr. 1602).

Crowder responded to the Commission's letter with the following statement on December 27, 1965:

> "In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation thereof, and for that reason both stations were sold in that year * * *" (R. 311).

When asked about his illness at the hearing, Crowder stated it was "upon a doctor's advice" that he "retired completely from active participation in the broadcast industry." His health became such that he could no longer continue the day-to-day active operation of the stations, "and for that reason both stations were sold in that year [1956]" (Tr. 1603, 1606–07). The Commission noted that no corroboration by a physician followed and Crowder did not identify the doctor who advised him, nor did he give the time or the place that the advice was given.[3] Additionally, the Commission concluded that the record was replete with evidence contrary to appellant's explanation, thus leaving "too large a doubt here to permit a grant of Crowder's instant application" (R. 1121). For example, the Commission found that Walter H. Scarbrough, Crowder's commercial manager at WHBT from 1952 until the station was sold in 1956, testified that he worked "pretty closely" with Crowder and that Crowder never complained to him about ill health (Tr. 1385, 1389–90).

In regard to the admitted misrepresentations concerning appellant's general managership at station WLIV as indicated in various filings with the Commission and his contrary private agreement with his brother-in-law, the Commission concluded (R. 1122):

> He did not disclose this agrement to the Commission. The same representation was repeated in the WLIV renewal applications signed by McCoin and filed with the Commission on May 6, 1958, and May 2, 1961. The representation was not corrected until the renewal application of April 28, 1964, which was filed by McCoin after Crowder had agreed to sell his interest in the station. In view of Crowder's admitted awareness of the significance of the representation and his knowledge of the existence of an agreement to the contrary, it must be concluded that this representation in the 1956 WLIV application was a deliberate misrepresentation.

Finally, as a separate and independent reason for denying Crowder's application, the Commission pointed to the testimony of Harry T. Burn, a lawyer and banker in Rockwood, Tennessee. In essence, Burn testified that in a conversation he had with Crowder in early 1957, Crowder indicated that you couldn't make money on radio stations through their operation, that you made money on radio stations by getting a license, building a good volume of gross income, and then selling the station. And this, according to Burn, was the reason Crowder was not concerned with local competition, since he didn't propose to operate a station other than until the time he could sell it. Crowder denied that this conversation occurred and stated that in neither of his two meetings with Burn had he ever expressed such an intent or business practice (R. 1124). While Burn was not a disinterested witness, the Commission found that his testimony was consistent with the facts taken as a whole and for this reason would be accepted (R. 1125).

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[3] The only purported explanation that the record provides on this matter is the conjecture of appellant's counsel (Tr. 1687–1688) that, "It could have been a telephone call. It could have been a country club conversation on the golf course. It could have been a social engagement," and that Crowder *could have* said, " 'I am nervous.' The doctor could easily have said, 'Get out of the radio business.' " No explanation was offered by appellant.

In sum, a unanimous Commission concluded that it could not accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health. It therefore concluded that a grant of his application for a station in Harriman, Tennessee, would not be in the public interest, convenience, and necessity (R. 1125).

On August 25, 1967, the Court denied the appellant's petition for a stay of the Commission's decision.

SUMMARY OF ARGUMENT

After a full hearing, the appellant failed to reconcile the inconsistent representations he has variously made to the Commission concerning his sale of stations WHBT and WDEH in Harriman and Sweetwater, Tennessee, and failed to sustain his burden of proof on the trafficking issue. Thus, the Commission was correct in deciding that Crowder should not be granted a license to operate another radio station in Harriman. Furthermore, the record provides ample support for the Commission's conclusion that Crowder acquired radio stations WDEH and WHBT "to be bought and sold at a profit rather than as facilities reasonably to be devoted to serving the public."

After carefully considering the evidence of record, the Commission found that appellant sold WDEH and WHBT at large profits. It could not accept either appellant's representation that he had sold his stations in an effort to leave broadcasting or that he had sold them because of ill health. To the contrary, the record shows that, immediately before and after the sale of these stations, appellant purchased a new radio station and served as its General Manager and purchased a bottling plant, serving as its manager. Moreover, an employee with whom appellant worked closely had no recollection of his being ill.

Not only does the record show that Crowder misrepresented his real intent in selling WHBT and WDEH, but it shows misrepresentations concerning his General Managership of WLIV, Livingston, Tennessee, and his ownership of a billiard parlor in Harriman.

Appellant's chief argument on appeal that the Commission's trafficking policy is vague is clearly without foundation. This Court and the Commission have on numerous occasions defined trafficking as the seeking of licenses for sale rather than for service. *Folkways Broadcasting Co., Inc.* v. *Federal Communications Commission,* — U.S. App. D.C. —, 375 F. 2d 299 (1967); *Franklin Broadcasting Co.,* 22 Pike & Fischer, R.R. 880 (1962); *Applications for Voluntary Assignments or Transfers of Control,* 32 F.C.C. 689 (1962); *Powell Crosley, Jr.,* 3 Pike & Fischer, R.R. 6 (1945). The cases which appellant cites show no variance in this policy but merely exhibit different results when applied to different factual situations.

To a large extent, appellant is arguing that the Commission should have relied on his unsupported explanations. But these explanations were carefully considered and rejected after a meticulous weighing of all of the evidence of record, and appellant has failed to show that the Commission's conclusions were arbitrary or unreasonable. This being so, its decision must be affirmed. *Consolo* v. *Federal Maritime Commission,* 383 U.S. 607 (1966); *Consolidated Edison Co.* v. *Labor Board,* 305 U.S. 197 (1938).

ARGUMENT

The Commission properly decided, after hearing, to deny appellant's application because he failed to reconcile his inconsistent representations and had not met his burden of proof on the trafficking issue.

After a full hearing and oral argument before the Commission *en banc,* the Commission upon careful consideration concluded that appellant had failed adequately to reconcile his inconsistent representations and had fallen short of his burden of proof on the trafficking issue. The unanimous view of the Commission was that the appellant should not be granted another radio station in Harriman, Tennessee, because of his conduct with respect to the stations he had formerly owned in Harriman and Sweetwater, Tennessee. On the basis of the entire record, it was concluded that the appellant had not shown "that he had acquired those stations for the principal purpose of operating in the public interest. On the contrary, the record indicates that the two stations were treated as properties to be bought and sold at a profit rather than as facilities reasonably to be devoted to serving the public" (R. 1121).

The issue here is simply whether the record supports this conclusion for where it appears that the agency's decision is supported by such evidence as a reasonable mind might accept as adequate, its decision must be affirmed. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 618 (1966); *Consolidated Edison Co.* v. *Labor Board,* 305 U.S. 197, 229 (1938). Here it is clear that there was ample support for the conclusions reached by the Commission.

A. Appellant Crowder failed to meet his burden of proof on the trafficking issue.

It has long been the policy of the Commission to discourage "speculat[ion], barter or trade in licenses."[3] "Trafficking" involves the acquisition of broadcast licenses for resale rather than for operation, and the Commission has consistently regarded this practice as being contrary to the public interest. As this Court said upon directing a hearing in this case, "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service." *Folkways Broadcasting Co., Inc.* v. *Federal Communications Commission, supra,* at 302.

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[3] *Applications for Voluntary Assignments or Transfers of Control*, 32 F.C.C. 689 (1962); see also *Powell Crosley, Jr.*, 3 Pike & Fischer, R.R. 6, 26 (1945), where the Commission noted that it had a long standing policy against "speculation in the public domain" and that it had informed Congress of its policy to disapprove transfers that represented trafficking in licenses.

The Commission here held that appellant had failed to sustain his burden under the trafficking issue in regard to the sale of two Tennessee stations. Apparently in an effort to justify this failure, appellant argues that the Commission has "no clear-cut policy" in regard to trafficking, and states that the Commission's decisions can be reconciled only by "taking refuge in varying factual patterns" (Br. 19). We disagree. The Commission's policy has long been clear. In fact, as above indicated, the standard that has been applied in this as well as in other cases was clearly spelled out by this Court when it directed the hearing herein. Although this standard is clear, it is equally pellucid that the acts which amount to an intent to traffic in broadcast licenses will necessarily vary from case to case. *Franklin Broadcasting Co.*, 22 Pike & Fischer, R.R. 880 (1962). We emphasize that the Commission's policy has remained unchanged. The cases which appellant cites (Br. 18–20) where trafficking was not found to exist were based on their particular facts and by no means reflect a variance in the Commission's policy as to what constitutes trafficking.[4]

Appellant claims to have sold WHBT and WDEH (at large profits) because he was ill and wanted to withdraw from the broadcast business. However, the record shows that, contrary to his claims of illness, he entered into the ownership of a new station and undertook the supervision of a new business, a bottling plant in Livingston, Tennessee, in 1956, the year of the sale of WHBT and WDEH. Although appellant claims to have acted under the advice of a doctor, he offered no medical corroboration. In addition to this failure of proof, the record contains the positive testimony of Crowder's commercial manager at WHBT from 1952 to 1956, with whom Crowder worked "closely," that Crowder had never complained to him of ill health.

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[4] Appellant states (Br. 14) that the Commission has applied policy established in 1962 to a 1956 sale. In 1962, the Commission did establish a rule, Section 1.597, 47 CFR 1.597, which provides that, except upon certain findings by the Commission, assignment and transfer applications involving stations held by sellers "for less than three successive years" will be designated for hearing on appropriate issues. The Commission did not designate the trafficking issue for hearing here on the basis of Section 1.597. Further Section 1.597 was merely the culmination of a long standing Commission policy against trafficking and not a formulation of new policy. In any event, the length of time Crowder held his stations does not determine whether there was trafficking. As this Court pointed out, "The fact that Crowder * * * operated station WHBT from 1950 to 1956 before selling it does not answer the question; the question is not whether trafficking intent arose prior to 1950, but whether it arose at all. As to that, events which did not begin until 1956 are sufficient to require the probing of an evidentiary hearing."

Further detracting from appellant's credibility was his "deliberate misrepresentation" concerning his managerial role at WLIV, Livingston, Tennessee, and the unexplained, although admitted misrepresentation on both the WLIV application for construction permit as well as the instant Harriman application, of appellant's degree of ownership in the Harriman Billiard Parlor. Each of these gaps in testimony and unresolved inconsistencies which led the Commission to conclude that it could not "accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health" and, accordingly, that it could not "conclude that a grant to Crowder of a station in Harriman, Tennessee, would be in the public interest, convenience or necessity" (R. 1125), is discussed below.

B. The appellant has failed to reconcile his inconsistent representations.

The crucial importance of honesty and fair dealing by licensees in their relationship with the Commission was recently underscored by this Court in *Lorain Journal Co.* v. *Federal Communications Commission*, 122 U.S. App. D.C. 127, 133, 351 F. 2d 824, 830, where it stated:

> It is the genius of our system that instead of government ownership we retain the spark of private profit and the drive of private enterprise, maintained under government surveillance at critical pressure points of regulatory policy. We do not welcome a gigantic bureaucracy second-guessing corporate management on details. But it is needful that the regulatory agencies be alerted and fairly and fully informed upon the emergence of a situation identified as a pressure point by law or regulation.
>
> A cardinal assumption of the regulatory system is undercut by a pattern of false or evasive reports. That misrepresentation or concealment of the true conditions as to underlying ownership is adequate ground for

> denial of renewal of license was established in *FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946), where Justice Jackson remarked (p. 227): "The fact of concealment may be more significant than the facts concealed."[5]

The Commission found that appellant in several instances had deliberately misrepresented matters to it. First, in regard to the application for the Livingston station, appellant admittedly misrepresented his ownership in a billiard business in Harriman. Crowder testified at the hearing that the business had not been owned as represented by him. He offered no explanation for this misrepresentation. Second, and more importantly, in giving his reasons for the sale of stations WHBT and WDEH, appellant represented in 1956 merely that he intended to leave the broadcasting business. In 1963 he claimed it had been ill health which had required him to leave broadcasting. The record substantiates neither of these claims, however, and indeed casts grave doubt on their truthfulness. Not only did Crowder fail to offer evidence of his alleged illness, but during the very year of the sales he became both a partner and the general manager of a new station licensed in Livingston, Tennessee. And, in the fall of 1956, he undertook the management and expansion of a new bottling plant in Livingston, Tennessee. The record shows that in applying for station WLIV in Livingston, Tennessee, appellant represented to the Commission that he would actively manage the new station. Later during this hearing he admitted that this was not the case; that he neither planned to nor had actually participated in the day-to-day operation of the station after it went on the air. Nevertheless, appellant continued to represent himself as the station's general manager in WLIV's 1958 and 1962 renewal applications. Crowder's conduct thus completely belies both his assertion of bad health and his claim that the station sales were motivated by a desire to leave broadcasting.

Finally, in addition to Crowder's own conduct there was testimony by the witness Burn that Crowder acquired broadcast licenses for the purpose of later selling them at a profit. Appellant argues that the Commission ignored the views of the hearing examiner in premising its findings on the testimony of Burn. However, the short answer to this is that while the Commission must consider the examiner's initial decision, it is not bound by his findings and conclusions. *Lorain Journal* v. *Federal Communications Commission*, 122 U.S. App. D.C. 127, 351 F. 2d 824 (1965). Indeed the Commission may reach a different conclusion even when an examiner's decision is based on demeanor findings[*] as long as the Commission's decision is supported by substantial evidence. *Federal Communications Commission* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 364 (1955).

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[5] See also *Hall, et al.* v. *Federal Communications Commission*, 99 U.S. App. D.C. 86, 237 F. 2d 567 (1956).

It should be emphasized, moreover, that the Commission far from ignoring the hearing examiner's decision was "in substantial agreement with [his] findings of fact" and adopted them with only certain modifications and additions. The Commission did not agree with the examiner's conclusions, however, believing that he "had failed to accord proper weight" to certain evidence bearing on the question of trafficking. Thus, for example, Burn testified that Crowder told him the way to make money in radio is not by operation but by obtaining a franchise, building up the gross volume of the business, and then selling the station. Crowder denied making the statement and the examiner did not attempt to resolve the conflict. The Commission carefully reviewed the record and concluded that Burn's testimony was consistent with the evidence and could not therefore be disregarded, as the examiner had done. It made clear, however, that it regarded the testimony as corroborative in nature, stating that "Crowder has failed to meet his burden of proof *without regard to the Burn testimony*" (R. 1123). [Emphasis added.]

Aside from this one point, appellant does not seriously dispute the evidence on which the Commission relied. Instead he offers alternative explanations for his conduct. But these explanations were carefully considered and rejected by the Commission. The Commission's decision demonstrates a most meticulous weighing of the evidence, pro and con. Appellant has failed to show that the result the Commisson reached is in any sense arbitrary or unreasonable. Accordingly, we submit that the Commission's conclusion that appellant has trafficked in broadcast licenses in regard to two stations and, therefore, that another grant would not serve the public interest, must stand.

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[*] Here, the examiner's decision was not based on demeanor findings. This being so, the Commission clearly can examine the record evidence and draw its own inferences and conclusions.

CONCLUSION

There is ample record support for the Commission's conclusion that Crowder trafficked in broadcast licenses and that he failed to reconcile his inconsistent representations to the Commission. Thus, the Commission was eminently correct in not granting appellant a license to operate another radio station in Harriman, Tennessee. The Commission's decision should be affirmed.

Respectfully submitted,

HENRY GELLER,
General Counsel,
JOHN H. CONLIN,
Associate General Counsel,
LENORE G. EHRIG,
EDWARD J. KUHLMANN,
Counsel.
Federal Communications Commission,
Washington, D.C. 20554.

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BRIEF FOR INTERVENOR

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,222

F. L. CROWDER, trading as
HARRIMAN BROADCASTING COMPANY, *Appellant*,

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*,

FOLKWAYS BROADCASTING COMPANY, INC., *Intervenor*.

*On Appeal from Decision of the
Federal Communications Commission*

ted States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

Of Counsel:

Miller and Schroeder
808 Munsey Building
Washington, D. C. 20004

November 27, 1967

ARTHUR H. SCHROEDER
JOHN B. KENKEL
WILLIAM M. BARNARD

808 Munsey Building
Washington, D. C. 20004

Attorneys for Intervenor

Washington D C THIEL PRESS 202 383 0826

COUNTERSTATEMENT OF QUESTION PRESENTED

As set forth in the Prehearing Stipulation, the appellee and intervenor disagree with the formulation of the question by the appellant, believing it to be incomplete and inaccurate in both factual and legal premises. In the opinion of intervenor and appellee, the question should be stated as follows:

In an earlier decision involving appellant's application this Court held that:

> "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service. There may be a basis for reconciling the inconsistent representation [to the Commission] in a manner which prevents disqualification of Crowder, but the subject [needs] examination at a live hearing."*

Is the Commission's decision entered after such hearing, denying appellant's application under the grounds that he failed to reconcile his inconsistent representations and had not met his burden of proof on the trafficking issue, supported by substantial evidence considered in light of the entire record?

**Folkways Broadcasting Co., Inc. v. F.C.C.*, __ U.S. App. D.C. __, 375 F.2d 299 (1967); and see *Folkways Broadcasting Co., Inc. v. F.C.C.*, __ U.S. App. D.C. __, 379 F.2d 447 (1967).

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BRIEF FOR INTERVENOR

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COUNTERSTATEMENT OF THE CASE

This appeal was brought pursuant to Section 402(b) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b), from the August 9, 1967 Decision of the Federal Communications Commission, which denied the application of F. L. Crowder, tr/as Harriman Broadcasting Company, for a new station in Harriman, Tennessee, where Crowder previously owned and sold station WHBT. (R. 1117, *et seq.*). Station WHBT is now owned by Folkways Broadcasting Company, Inc., the intervenor herein.[1] The Commission's decision was entered after an evidentiary hearing on Crowder's application which had been ordered by this Court in *Folkways Broadcasting Co., Inc. v. F.C.C.*, __ U.S. App. D.C. __, 375 F.2d 299 (January 5, 1967). In the decision on appeal, the Commission unanimously concluded that a grant of Crowder's application would not serve the public interest because he had failed to satisfactorily explain inconsistent representations as to his earlier transactions in broadcast authorizations.

In the intervenor's view, the appellant's statement of the case is inadequate, in both his discussion of the background and the matters of record in the agency hearing upon which the decision on appeal was entered. Accordingly, a Counterstatement is needed. However, since the appellee is also setting out a counterstatement in its brief the following one will be abbreviated when possible although some repetition is unavoidable so that the intervenor's within arguments can be placed in context.

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[1] For convenience, appellant, appellee and intervenor will most often be referred to herein as "Crowder", "Commission", and "Folkways", respectively.

A. The Background and This Court's Decision in Case No. 19,971.

In 1961 Crowder applied to the Commission for a permit for a new AM radio station in Harriman, Tennessee, where he had previously owned and sold such a station at a profit of some $61,000. Folkways, the licensee of station WHBT there, filed a petition to deny the Crowder application, pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. 309(d). Folkways contended that the public interest finding required by the Communications Act could not be made with respect to the Crowder application, at least not until certain issues as seen by the petitioner were resolved in an evidentiary hearing. The first of these issues is the so-called "trafficking" question, which arose in connection with Crowder's instant application for another station in Harriman where he had previously sold WHBT for a profit and his transactions in broadcast authorizations in the Tennessee communities of Sweetwater (WDEH), and Livingston (WLIV), particularly in view of Crowder's representation to the Commission that the 1956 sales had been occasioned by ill health of such magnitude that he was forced to retire from active participation in the industry while concurrently in 1956 he was representing to the Commission that he would be the general manager of the Livingston station. The second question which Folkways raised concerned Crowder's alleged survey of programming needs for the applied-for station. The third issue concerned misrepresentations to the Commission of material matters with respect to both the trafficking question and the community survey. Folkways also challenged Crowder's financial qualifications to construct and operate the proposed station and, finally, sought an issue to determine whether the economic situation in Harriman, Tennessee, was such that a grant of Crowder's proposal would result in loss or degradation of existing service in the community.

In the original proceeding, a majority of the Commission accepted Crowder's explanations of the questions which had been raised by the pleadings. Particularly pertinent to the instant appeal, the Commission accepted Crowder's explanation that he had been forced to sell WHBT, Harriman, and WDEH, Sweetwater, on account of ill health of such magnitude that he had to retire from active participation in broadcasting and that his 1956 representation that he would be the general manager of a new station had been but an inadvertent selection of imprecise language. Further, Crowder had represented in his instant application that he was the 100% owner of a business in Harriman (billiard parlor), and the Commission relied upon this representation, as argued to it by Crowder in the pleadings, as part of a favorable resolution of both the programming survey and the financial qualification issues which had been raised by Folkways' petition to deny. With respect to the issue of the effect of Crowder's application on existing service in light of the economic situation in Harriman, Tennessee, the Commission concluded that Folkways had not made a *prima facie* showing to warrant a hearing. By a divided vote, the Commission adopted a Memorandum Opinion and Order, released January 14, 1966, granting Crowder's application without hearing and denying Folkways' Section 309(d) petition to deny. (R. 324-334).

Folkways appealed to this Court the Commission's grant-without-hearing of the Crowder application. By a 2-1 decision, this Court reversed the Commission's action, and held that the evidentiary hearing specified by the Communications Act was required on issues concerning Crowder's qualifications and whether the advent of the station he proposed in Harriman would lead to degradation of service to the public. *Folkways Broadcasting Co., Inc. v. F.C.C.*, __ U.S. App. D.C. __, 375 F.2d 299 (Case No. 19,-971, January 5, 1967). In reversing the Commission's grant-without-hearing, this Court's majority opinion noted that the record before it indicated that Crowder previously filed sworn inconsistent representations to the Commission in the sensitive area of trafficking in broadcast licenses, which would preclude a grant to Crowder unless resolved favorably to him. Since the nub of the instant appeal is the Commission's decision on the trafficking issue which eventuated, we set out in this Counterstatement the pertinent language from this Court's majority opinion which required the hearing:

> "On the trafficking issue - whether Crowder has engaged in trafficking of broadcast authorizations, and whether grant of its present application would create another opportunity for such trafficking, inconsistent with the public interest - we conclude that a hearing should have been held. The record supports the factual situation now set forth as relevant to this issue.
>
> "Mr. Crowder obtained sole ownership of station WHBT in 1950 and operated this station until he sold it in 1956 at a profit of some 61,000 dollars. In September 1954, he was granted a construction permit for station WDEH, Sweetwater, Tennessee. He commenced its operation in February 1955 and sold it in January 1956 for 57,500 dollars, a profit of approximately 22,000 dollars. In 1956 he also applied for and was granted a construction permit for station WLIV, Livingston, Tennessee, in which he held a fifty per cent interest, which he sold in 1964. In responding to Folkways' trafficking allegations in the present proceeding, Mr. Crowder represents that in 1956 he was forced by ill health to sell his interests in WHBT and WDEH: 'Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry.' However, when he applied for Commission approval of the two sales in 1956, he failed to give this reason though the Commission asked for a fuller statement of his reasons. It was not until 1963 that health reasons were suggested. Moreover, in 1956 when he was 'retiring completely from the radio broadcasting industry,' he was also applying for a license for the Livingston station, representing that he was to be a fifty per cent partner and the general manager of the station.

> "The court cannot accept the Commission's conclusion of no inconsistency in these representations on the record before the Commission. The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service. There may be a basis for reconciling the inconsistent representations in a manner which prevents disqualification of Crowder, but the subject needed examination at a live hearing."
>
> (375 F.2d at 301-302, footnotes omitted).

Further, as this Court then noted, albeit the matters which had been raised in pleadings before the Commission on the question of whether Crowder had additionally misrepresented or failed to disclose material facts in connection with an alleged survey of community needs for his proposed station were not such as to infect with error the Commission's clearance of Crowder on such question, they did enter into consideration with respect to the trafficking issue.[2] Finally, in the *Folkways* decision, the majority concluded that the Commission should have held a hearing on the economic impact, or so-called *Carroll* issue,[3] particularly since an evidentiary hearing was required in any event on the trafficking issue. 375 F.2d at 305.

During the *Folkways* appeal, Crowder constructed the applied-for radio station. After this Court reversed the initial grant the Commission gave Crowder temporary authority to operate the station during the pendency of the evidentiary hearing. Upon an action in the nature of mandamus brought by Folkways, in a *per curiam* order of April 26, 1967, this Court apprised the Commission that the agency's further grant to Crowder to operate the station pending the evidentiary hearing was improper and should be withdrawn in light of the requirements of Section 309(d) of the Communications Act and the Court's January 5, 1967 decision. *Folkways Broadcasting Co. v. F.C.C.*, __ U.S. App. D.C. __, 379 F.2d 447 (April 26, 1967), petitions for rehearing *en banc* denied May 22, 1967. The Court's April 26 *per curiam* order pointed out that there were "serious questions regarding Crowder's character qualifications" which precluded the temporary grant proposed by the Commission.[4]

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[2] ". . . the record on this issue [alleged community desire for Crowder's proposed station] influences, though it does not control, our decision on the trafficking issue discussed *infra*." (375 F.2d at 301).

[3] So named from *Carroll Broadcasting Co. v. F.C.C.*, 103 U.S. App. D.C. 346, 258 F.2d 440 (1958).

Thereafter, through various motions for temporary stays to this Court and in the U.S. Supreme Court, Crowder was permitted to temporarily operate the station pending the decision of the Commission in the evidentiary hearing.[5] The evidentiary hearing was held, and on August 9, 1967 the Commission released its final decision denying the Crowder application and ordering his temporary operation of the station to cease. Crowder noted this appeal from that decision, and sought a stay thereof pending such appeal. His petition for a stay of the Commission decision was denied by this

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[4] The April 26 *per curiam* order was adopted on a 2-1 vote, Senior Judge Fahy dissenting, but the dissent was with respect to the mandamus-type relief set out in the order rather than on the question of the validity of a temporary grant to Crowder pending the resolution of the character qualification questions.

[5] Following the denials of the petitions for rehearing *en banc* of the Court's April 26, 1967 mandamus order, Crowder was given by this Court an emergency six-day stay, during which time he petitioned the Chief Justice of the U.S. Supreme Court for a stay. In that proceeding the Commission, through the Solicitor General, pointed out that the evidentiary hearing was in progress and was expected to be completed shortly, and suggested that a stay of the order terminating Crowder's temporary operation pending the completion of the agency proceeding would not be inappropriate. The Chief Justice issued such a stay order on May 19, 1967, to extend to August 15, 1967, or the release of the Commission's final decision, whichever event first occurred.

Court by order of August 25, 1967. Crowder filed a petition for stay in the U.S. Supreme Court, tendering it successively to two Justices of that Court, and both stay requests were denied. Crowder's operation of the applied-for station terminated on August 31, 1967.

B. The Trafficking Issue - Crowder's Various Explanations.

We believe it would be convenient to list the facts of the case pertinent to the trafficking issue in the order in which they were brought to light rather than in strict chronological sequence. As above indicated, the trafficking question was raised by Folkways' December 1962 petition to deny the Crowder application. The petition showed Crowder's 1956 sales of the Harriman and Sweetwater stations and the Livingston interest. The petition developed that the sales of WBHT and of WDEH had been upon Crowder's representation that he wished to withdraw from broadcasting in those communities and that such reason was the only one given by Crowder in the applications for Commission approval of the sales. The Folkways petition showed that the WDEH sale was of assets valued at $29,985 for $52,500, and that the sale/purchase price for WHBT was $80,000 for sale-time value of assets of $18,649.

In response to the allegation of apparent trafficking raised by Folkways' petition, Crowder presented a sworn explanation to the Commission concerning the 1956 sales of both the Harriman and the Sweetwater stations, representing that:

> "The true facts, which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his radio interests due to ill health. Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry." (R. 144).

Following this, however, Folkways pointed to Crowder's 1956 representation in an application for a new station in Livingston, Tennessee, where he had stated that he was to be the general manager.

Thereafter, the Commission sent Crowder a letter adverting to the apparent inconsistency and asked for his explanation. (R. 309). In a sworn answer to the Commission inquiry, Crowder again stated that his health became so bad that in 1956 he could no longer continue in broadcast operations and for that reason had sold stations WHBT and WDEH then.[6] His explanation anent the representation in the 1956 Livingston application that he would be general manager was that he had not in fact so acted and the term was not descriptive of his limited activities of "recommending and hiring attorneys and consulting engineers, obtaining equipment, and the like," in the pre-operational days of the Livingston station station. (*Ibid.*).

The Commission accepted Crowder's 1963 and 1965 sworn representations as to the reasons for the WDEH and WHBT sales, as well as for the apparent inconsistencies between the 1956 ill health reason for the sales and the concurrent representation of a general managership of the Livingston station. On the basis of such representations the agency made the initial grant-without-hearing. (R. 327-328).

In the Folkways' appeal to this Court from the Commission action (Case No. 19,971), Crowder, as intervenor, repeated to the Court the ill health in 1956 contention. For example, it was stated in the Crowder brief in Case No. 19,-971:

> "He owned WDEH in Sweetwater, Tennessee, and operated it from 1954 to 1956, when it too was sold. The reason for the sale of both facilities, one held

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[6] The answer, verified by Crowder, stated that "In 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation thereof, and for that reason both stations were sold in that year. * * * In sum, because of the then state of his health Mr. Crowder's last operational activities upon a routine basis in the broadcast field occurred in 1956 before he disposed of his interests in the Sweetwater and Harriman stations." (R. 311-314).

> for ten years and the other for two, was the state of Mr. Crowder's health. Folkways does not dispute the fact with medical evidence or with anything other than inference that Mr. Crowder's health *that year* was as stated, but argues only that the Commission should have been told in 1956 about it. . . ." (Emphasis supplied).[7]

Following this Court's reversal of the Commission's initial grant, the Crowder application was designated for hearing on issues concerning trafficking and the economic impact question, both as required by the Court's opinion. The burden of proof under the trafficking issue was placed upon Crowder. (R. 381-385). In the evidentiary hearing which followed, Crowder was questioned as to when he determined to sell WHBT and WDEH, but he refused to answer the question directly and claimed he didn't know. (Tr. 211, 213). Folkways then subpoenaed the records of the broker who had handled the sales, and they showed that within four months after WDEH commenced operation Crowder had been in touch with the media broker with respect to the sales of both stations and on June 22, 1955 signed a listing agreement for their sale. (WHBT Exs. 16, 17, 25; see R. 990-991).

After this evidence of the listing of the stations for sale prior to the previously represented year of 1956, Crowder was recalled to the stand by his counsel and then offered another explanation for the sales. He now testified that after WDEH went on the air in February of 1955 he ascertained that his manager there, a Mr. Lee, was paying more attention to the secretary than to business, so he fired him and hired another manager, a Mr. Foster, but he became involved in partisan politics, which adversely affected the station's business which so affected his nerves that he decided to sell that station. (Tr. 1484). On examination by his counsel, Crowder did not claim to have consulted a doctor, nor did he advert to any medical advice in the premises.[8] On the other hand, it was developed on the record in the evidentiary hearing there were no similar problems at WHBT where Crowder participated in the station's business on a day-to-day basis and had as his manager his long-time friend and associate Walter Scarbrough. Mr. Scarbrough testified that in the 1955-56 period Crowder's health appeared to be good and in any event Crowder never complained about it. (Tr. 1385, 1389-90).

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[7] Crowder Brief, Case No. 19,971, p. 17. It would appear that from both the Commission's repetition of Crowder's 1956 ill health argument, as well as Crowder's own assertions, the Court understood that ill health in 1956 forced the sale. See *e.g.*, the statement in this Court's majority opinion that "In responding to Folkways' trafficking allegations in the present proceeding, Mr. Crowder represents that in 1956 he was forced by ill health to sell his interests in WHBT and WDEH: 'Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry.'" (*Folkways Broadcasting Co., Inc. v. F.C.C., supra,* 375 F.2d at 401-402).

Although, as above stated, in the application to the Commission for the Livingston station permit Crowder represented that he would be the general manager, at the hearing he testified that he had previously agreed privately with his brother-in-law partner, McCoin, that except for assisting in the formulation of the application and contacting the consulting engineer and attorney and seeing to the construction of the facility, he would not participate in the operation of the station. (Tr. 1717). Evidence adduced on the record of the evidentiary hearing tended to show that Crowder was not active in WLIV's operation, including Crowder's testimony that he did not even go near the station for months at time. The record evidence showed that Crowder's investment in WLIV was not more than $7,500. During the period in which he held an ownership interest, he drew from $5,000 to $6,000 annually as his share of the profits. At the time of the sale of his interest, in 1964, the assets had been fully depreciated, and the basis for his gain on the sale of his interest was zero. He sold his 50% interest to his brother-in-law for $50,000 which was, therefore, all profit. In addition, under the contract of sale he obtained one half of the accounts receivable, which calculated to an additional $10,000 to him. (See R. 942).

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[8] In the instant hearing, in connection with Folkways' attempt to develop information with respect to Crowder's application for life insurance and the statements of ill health or medical treatment therein, *vel non*, Crowder's counsel suggested that the previously-pleaded doctor's advice "could have been a telephone call. It could have been a country club conversation on the golf course. It could have been a social engagement. He [could have] said, 'I am nervous'; the doctor could easily have said, 'get out of the radio business.'" (Tr. 1687-88).

Added to his previous profit of some $91,000 on the sales of WHBT and WDEH, he realized a profit of $50,000 on the sale of his WLIV interest and had received other payments as disbursement of profits to an additional approximate $50,000, for a calculated figure of $190,000 profit for the WHBT, WDEH and WLIV sale transactions. (R. 942).

During the hearing, Mr. Harry T. Burn, a banker and lawyer from Rockwood, Tennessee, testified as to conversations with Crowder about the latter's attitude toward broadcast station acquisitions. Rockwood, like Harriman, is in Roane County, and the two towns are some eight to ten miles apart. The first direct business contact between Burn and Crowder occurred in the early 1950's when Crowder owned station WHBT and Mr. Burn was an officer of the bank in Rockwood. Mr. Burn learned that some civic leaders in Rockwood were thinking about applying for a radio station for that town, and it was his personal business view that the county's economic interests would be better served by supporting Crowder's station as a single county station than by the addition of a second one in the county at Rockwood.[9] He contacted Crowder and discussed with the latter the question of WHBT establishing a remote studio at Rockwood. (Tr. 369-376, 446-447, 469). As a result of the discussions with Crowder, Mr. Burn's bank remodeled the third floor of the bank building for a remote WHBT studio, and a lease agreement was entered into. The WHBT remote studio was maintained there until some time after Crowder's sale of the station in 1956 and the establishment of a second station in Rockwood, WRKH. Mr. Burn testified that during the time Crowder maintained the WHBT studio in his bank building the two had occasional conversations concerning broadcasting matters. (Tr. 435-437). On another occasion, which Mr. Burn placed at or near the time Crowder was selling stations WDEH and WHBT, Burn mentioned that some interests from out of town (McMinnville, Tennessee) were interested in placing a station in Rockwood, and adverting to their earlier discussions anent the economic undesirability of such a move, the conversation continued with Crowder's comment that he, Crowder, "had learned the hard way that you could not make money on radio stations through operations, that you made money on radio stations by getting a license, building a good volume of gross income, by implication anyway, you had to, to do it through a subsidy, and then selling the station." (Tr. 379). In the conversation, according to Mr. Burn, Crowder commented that:

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[9] As Mr. Burn testified, from a civil pride point of view he was not adverse to a separate station for Rockwood, but from a business point of view felt that the establishment of a WHBT remote studio at Rockwood would be a financially sounder alternative.

> "He didn't propose to operate a station anyway other than until a time he could sell it." (Tr. 379, 436-437, 450).

Burn could not fix the specific time of the conversation, but placed it some time between February and May of 1957. (Tr. 430-432, 449).

When Crowder sold WHBT to Folkways in 1956 he had taken back a promissory note for the deferred portion of the purchase price, secured by a deed of trust and mortgage on the station's realty and chattels. In May of 1961, Folkways entered into a refinancing program. The Crowder note had been paid down to approximately $23,000, and after Folkways' Mr. Crosthwait ascertained that Crowder would be willing to sell the note and assign the security, Mr. Burn's Rockwood bank bought the note and security from Crowder and made additional financing available to WHBT. After Crowder filed his instant application for a new station in

Harriman, the bank filed a petition to deny it on the grounds that Crowder's proposed station would compete with and devalue the bank's security. As Mr. Burn testified in the instant hearing, at about the same time he had an occasion to see Crowder at a public affair in Harriman and a brief conversation between them ensued. According to Mr. Burn, he opened the conversation by reminding Crowder of the latter's earlier expressions that the only way to make money in radio was to go into a community where there wasn't a station, build up the revenues, and then sell the station at a profit, and he suggested to Crowder that the instant Harriman application appeared to be a departure from that philosophy in that Harriman already had a station. As Mr. Burn put it, Crowder then explained that he expected WHBT to go under financially and Crowder would then be in a position to have the only station. (Tr. 381-382, 437-438, 462-463).

Crowder denied having any such conversations with Burn, and asserted that the only times he had contact with Burn was when the lease for the WHBT remote studio was signed, when he sold the WHBT note to Burn's bank, and the casual meeting at a political rally. (Tr. 1710-1713). Burn had testified, *inter alia*, that in the conversation about radio broadcasting economics and philosophy Crowder had pointed out why he expected WHBT to go under, adverting to the cost of tubes, the dial position, *i.e.*, the frequency, and other such matters. (Tr. 381). In denying any such conversation with Burn, Crowder claimed that he had little familiarity with the technical aspects of the operation of the radio station, did not know what the cost of tubes would be, or whether, for example, the tube cost for a 1000 watt transmitter would be more than for a 250 watt transmitter. (Tr. 1648-49). In general, he claimed to have little if any knowledge of such radio operational matters. (Tr. 1703-04). He offered this denial of an ability to have commented on such matters as support for his general denial of any conversation with Burn about the broadcasting business. (Tr. 1499-1506).[10]

C. Other Misrepresentation and Indications of Crowder's Lack of Credibility.

Commencing with the first application Crowder had occasion to file with the Commission, in 1950, Crowder represented that he was and had been since 1944 the 100% owner of the Harriman Billiard Parlor. In the several applications he filed in the 1950-1967 period, the representation of 100% ownership was set forth in varying ways, but always to the same effect, such as "Owner, Harriman Billiard Parlor" in the 1955 application for renewal of license of WHBT (BR 1664), "Harriman Billiard Parlor, Harriman, Tennessee, owned by F. L. Crowder" in the 1951 WHBT renewal application and in a September 1, 1966, application for an FM station in Harriman. (See Tr. 324, 1597, 1664, and material in the Commission's files which was officially noted in the hearing).

During the above-referenced petition to deny proceedings, one of the issues raised by Folkways was the adequacy, *vel non*, of Crowder's survey of community needs and interests, and in responding thereto Crowder's sworn opposition pleading contended that he was fully aware of the needs of Harriman from his previous radio operation and from the fact that he was a businessman there (the application listed the 100% ownership of the billiard parlor). The Commission accepted this representation in making the initial grant-without-hearing and rejected Folkways' request for a community familiarization issue on the ground, *inter*

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[10] A fact which might be noted here, although out of chronological order, was Crowder's representation in his 1956 application for the Livingston station that the proposed costs of operation had been estimated by the applicant, meaning him alone, since he was the experienced broadcaster and his brother-in-law partner had no such experience. (Tr. 1599).

alia, that "at present he is the *owner* of a business in Harriman . . ." (January 14, 1966, Memorandum Opinion and Order, Par. 6, R. 326, emphasis supplied).[11]

During the course of the evidentiary hearing, however, it was developed by counsel for Folkways that Crowder is not the 100% owner of the Harriman Billiard Parlor, nor had he been since 1948, when he established a partnership therefor with another, and in which Crowder's interest was reduced to two-thirds. (R. 243-244).

When Crowder filed his instant application to re-enter the Harriman radio market, his proposal made no showing as to the reason for its filing, nor did it show any expression of local need or desire for the station. Subsequently, however, Crowder filed an amendment to the application informing the Commission that a community programming survey had been made, submitting as evidence thereof letters addressed to him by various community leaders purporting to comment on the need and desire for Crowder's station and for the purpose of "substantiating the fact that the proposed programming for his proposed new station had been discussed with them (the letter writers)." (Tr. 1256, 1358; R. 1010-1012). In responding to the Folkways petition, Crowder recited, under oath, that the contacts had been made in such a manner that all the letter writers were "completely and fully apprised of the facts", and that the explanation as to the procurement of the letters by Crowder's agent, Scarbrough, submitted by Crowder "completely and fully sets forth the manner in which these contacts were made in which the letters were obtained." (Tr. 1588). The explanation contained such representations as that the letters, although instigated by Scarbrough, had been submitted directly to Crowder by the letter writers (R. 203, and see Tr. 1418). With this explanation, the Commission cleared Crowder of any community survey or misrepresentation charges in the hereinabove-mentioned January 1966 grant without hearing.

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[11] Furthermore, in the petition to deny proceedings, Folkways had sought a financial qualification issue, but the Commission relied on Crowder's representation of cash and "net current assets [which] are in excess of $70,000" to meet the approximate $57,103 requirement for the construction and operation of the proposed station. (R. 331). The assets relied upon by the Commission had been specified by Crowder in his financial statement which included the Harriman Billiard Parlor listed as $15,000 for the equipment and $30,000 for the real property. (R. 19).

However, on the record in the evidentiary hearing it was shown that Crowder's previous explanation was erroneous and incomplete. For example, three of the letter writers were subpoenaed by Folkways to testify in the instant hearing, and their testimony showed that they were given preformed letters to sign. (Tr. 1739, 1764, 1772-73). Further, notwithstanding the original representation in the Crowder pleading that the letter writers submitted the letters directly to Crowder, it was shown on the hearing record that Crowder received them from Scarbrough who had not been informed of the programming plans (Tr. 344, 1421-2, 1523, 1575), and Crowder offered no explanation for this variance from the previous representation. (See R. 1020-21).

As part of the intervenor's case, Crowder was examined with respect to the programming on the station against the proposition of whether the instant application was an implementation of the programming proposal or of a philosophy that the way to make money in the radio business was by building up the volume of revenues and selling for a profit. Crowder's instant application contained an exhibit representing that specific educational, discussion, agricultural, and various other general community programs would be carried. (Tr. 301, 304-304b). He had been operating the station since August, 1966, and on the record it was shown that none of the local community programs he had represented in his application to be broadcast had in fact been carried. (Tr. 316-322).

Crowder's commercial practices were also examined on the record with respect to the question of the indications they might give as to whether he was utilizing the Harriman station consistent with a philosophy of building up advertising revenues in any way possible so as to make the station attractive for subsequent sale. The record dislcoses that although Crowder first denied it, he was selling advertising time at less than his own published rate card rates, and using other business relationships to extract sales of broadcasting time. (See R. 1023-1026 for summarization of the record evidence on this point).

As above recited, Crowder had told the Commission that the 1956 sales of his Harriman and Sweetwater radio stations were occasioned by ill health of such magnitude that he had to withdraw completely from the broadciasting business. Against the ill health in 1956 representation, it was shown on the record that in September of 1956 (while he was constructing station WLIV, Livingston) he also purchased a soft drink bottling operation in the same community. The franchise area for the distribution of the soft drinks encompassed fifteen counties in Tennessee and Kentucky, and both the physical facilities and the business were expanded by Crowder, commencing in 1956. By 1966 he had enlarged the building and plant to a facility evaluated by him at over $200,000. (Tr. 262-264, 300-301, 1488).

The aforegoing summary does not include all of the evidence which was adduced on the record of the evidentiary hearing (See R. 1168-1240), but it does highlight that considered significant under the trafficking issue. Before concluding this portion of the Counterstatement, however, it must be recited that Crowder offered no evidence at to his programming at either WHBT, when he owned it, WDEH, WLIV, or the applied for station from the time it commenced operation in August of 1966 (WXXL). As above indicated, the aforegoing references as to the deficiencies in the WXXL operations were produced on the record by the intervenor.

D. Concluding Events and the Commission Decision

Following this Court's April 26th *per curiam* order in the second *Folkways* case, 379 F.2d 447 (1967), Crowder had requested a stay thereof and in that connection the Commission had advised the Court that the evidentiary hearing was proceeding on an expedited basis, which led this Court to order a temporary stay of the effectiveness of its April 26th termination of operation order. On this account, the Commission believed that due and timely execution of its functions required that the record be certified to it for a final decision, without requiring the Examiner to prepare an initial decision. However, thereafter Crowder obtained a further stay from the Chief Justice of the U.S. Supreme Court, and with additional time available the Commission subsequently directed the Hearing Examiner to make a partial initial decision, *viz.*, on the trafficking issue.

After the conclusion of the evidentiary hearing, the parties, including the Commission's Broadcast Bureau, submitted proposed findings and conclusions. The Broadcast Bureau's findings distilled the evidence of record, and with respect to the trafficking issue submitted a conclusion to resolve it against Crowder. The Bureau concluded that Crowder's credibility could not be accepted, that it was unnecessary to reach the conclusion as to whether Crowder trafficked with respect to WLIV because it was "patently clear" that the 1956 sales of WHBT and WDEH required a conclusion that Crowder had engaged in trafficking in broadcast licenses with respect thereto. The Bureau further concluded that on the basis of the record Crowder made affirmative misrepresentations with respect to his sole ownership of the Harriman Billiard Parlor, that Crowder was not candid in his testimony relating to commercial practices at the Harriman station, and that there had been an affirmative misrepresentations to the Commission by Crowder in his 1956 WLIV application where he had proposed himself as the general manager. (R. 893, 931-973).[12]

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[12] On the economic impact or *Carroll* issue, the Bureau concluded that Folkways had not shown that the market could sustain an addi-

The Examiner prepared a partial initial decision, addressing himself to the trafficking issue. He set forth most of the facts of record concerning Crowder's dealings in broadcast authorizations, and then concluded that in his view Crowder had not engaged in trafficking. He gainsaid Crowder's inconsistent representations on the ground that the "age" of the case was a barrier to a decision that Crowder attempted to mislead the Commission, although he did recite "it would appear that Crowder sought to divert the Commission from investigation of the trafficking allegation, conduct which . . . could be interpreted as an admission of impropriety." With respect to the Crowder-Burn testimonial conflict, the Hearing Examiner stated that he "disavowed possession of a touchstone which distinguishes genuine gold from gilt" and made no conclusion as to demeanor or as to which of the witnesses was truthful. He concluded that the Crowder-Burn conversations may have occurred as Burn testified and Crowder forgot about them, but he found no irrefutable internal indicia of acceptability in Burn's testimony, and so discounted it in proposing to resolve the trafficking question favorably to Crowder. (R. 1083-1111).

Both the Commission's Broadcast Bureau and Folkways filed exceptions to the partial initial decision (R. 1134-1166, 1168-1240), and the matter was brought on for oral argument *en banc* before the Commission on July 17, 1967. Thereafter on August 9, 1967 the Commission released a final decision, unanimously adopted, denying Crowder's application on the ground that the trafficking issue had to be resolved against him and in light of all the facts and circumstances the agency could not make the conclusion that a grant to Crowder would be in the public interest, convenience or necessity. Concluding that the resolution of the trafficking issue was dispositive of the case, the Commission did not reach the *Carroll* issue and accordingly made no findings or conclusions with respect thereto. (R. 1117-1127).

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tional broadcast station without degradation of existing service. However, since Crowder was unqualified in the Bureau's view the ultimate conclusion it proffered was that his application should be denied.

In its final decision the Commission recited that it was in substantial agreement with the Examiner's findings of fact, but it was unable, however, to agree with the Examiner's conclusions. The unanimous decision of the Commission was that the Examiner failed to accord proper weight to relevant and material evidence of record bearing on the question of trafficking and that he had placed undue emphasis on certain facts while failing to give proper consideration to others of equal or greater significance. (R. 1119). The Commission held that the instant application involved a proposal by Crowder to obtain a new radio station in Harriman where he was formerly the licensee of a station which he had sold at a profit and with respect to which he had made varying and inconsistent explanations. The Commission pointed out that the case had been remanded by this Court because of the earlier shown inconsistencies in Crowder's representations, and "On the record of this evidentiary hearing, we conclude that Crowder has failed adequately to reconcile his inconsistent representations and has fallen short of meeting his burden of proof on the trafficking issue."

In reaching its ultimate conclusion to deny the Crowder application the Commission noted that it could not accept Crowder's subsequent explanation for the WHBT sale, *i.e.*, ill health, because it had not been mentioned as a reason at the time of the sale although the application form specifically requested the reason, no corroboration by a physician was offered by Crowder although he claimed to have relied on a doctor's advice, Crowder's commercial manager's testimony contra-indicated poor health on Crowder's part at the time of the claimed ill health; also, at the alleged ill health time, Crowder was acquiring a substantial bottling plant in Livingston which he personally supervised, and there was a clear misrepresentation with respect to the WLIV general managership matter. As the Commission pointed out in its decision, "We are now told that the latter representation was incorrect and that his participation in the Livingston station was therefore not inconsistent with the explanation given for the sale of WHBT and WDEH. We cannot permit an applicant thus to decide as it suits his purpose which of his inconsistent representations we are to believe." (R. 1121).

The Commission went on to point out that it evaluated the evidence of record in connection with Crowder's acquisition and sale of WDEH, and "here, again, the reason now given for the sale is not consistent with the rest of the evidence." The agency concluded that "it was not satisfied as to the credibility of Crowder and could not accept his second-thought explanations for the WDEH transaction."

In the final decision, the Commission also adverted to the record-shown discrepancy between Crowder's representations as to his 100% ownership of his other Harriman business and the true ownership thereof, and noted that Crowder offered no explanation for his misrepresentations in that connection to the Commission except a claim of "error". The final decision went on to discuss the Harry T. Burn testimony, but the Commission pointed out "we wish it to be clear that we believe Crowder has failed to meet his burden of proof without regard to the Burn testimony." (R. 1123). The Commission concluded that although Burn was not a disinterested witness, the facts taken as a whole were consistent with Burn's testimony rather than Crowder's, noting in such connection the inherently unreasonable basis of Crowder's disavowal of the pertinent conversations with Burn, *viz.*, Crowder's claim of insufficient knowledge of broadcast matters to have made the statements attributed to him by Burn.

In sum, the Commission concluded:

> "We cannot accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health. After a careful consideration of all the facts and circumstances involved we are unable to conclude that a grant to Crowder of a station in Harriman, Tennessee, would be in the public interest, convenience or necessity.*
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> *In light of our conclusions concerning WHBT and WDEH, we need not resolve the trafficking issue as it relates to the Livingston station (WLIV).
>
> (R. 1125).

SUMMARY OF ARGUMENT

Crowder's brief obfuscates the real issues. Contrary to his contentions, this case does not involve difficult technical questions as to the number of broadcast authorizations which must be present or the minimum number of years any given license must be held to avoid a transaction being deemed trafficking in broadcast licenses. This case does not involve, either, the Commission condemning Crowder for having made substantial profits in the disposition of broadcast authorizations. What this case does involve, however, is the well-established principle that a regulatory agency such as the Commission is entitled to "be alerted and fairly and fully informed upon the emergence of a situation identified as a pressure point by law or regulation", in which areas the undercutting of the regulatory system by a pattern of false or evasive reports disqualifies the evader. *Lorain Journal Co. v. F.C.C.*[13] It is beyond question that trafficking in licenses is a "pressure point" or "sensitive area", as this was clearly stated by this Court in this very matter in the *Folkways* decision, *supra*. There this Court pointed out that "The trafficking issue is a sensitive one vitally affecting the public interest represented by the Act administered by the Commission. Licenses cannot be granted in the public interest to those who seek them for sale rather than service." Since misrepresentation of even immaterial matters precludes a finding that the misrepresenter possesses the qualities required of one seeking an authorization under the Communications Act to operate in the public interest, *F.C.C. v. WOKO, Inc.*, 329 U.S. 223 (1946), *a fortiori*, Crowder's severe trampling of the judicially-approved higher standards which were applicable here is the keystone of the correctness of the Commission's decision.

In contending against the Commission decision which affixed a trafficking-in-licenses label to him, Crowder seeks to avoid the point that his own efforts to divert the agency from investigation of the trafficking question gave a clear indication of its presence. Why would he had made the first statement that ill health in 1956 *forced* the sales which he himself had instituted voluntarily a year earlier if he was not in fact trying to hide the real reason for the ~~sales~~ sales? The chronology of the varying explanations, and their mutual inconsistencies, required the resolution of the trafficking issue against Crowder. When questions were first raised in the pre-grant pleadings about the 1956 sales of WHBT and WDEH, Crowder made a sworn "true facts" explanation that the sales were forced by ill health of such magnitude that upon a doctor's advice he had to withdraw completely from active participation in broadcasting. When he made this "true facts" explanation, he overlooked, however, the earlier representation made to the agency at the time of the sales that he would be the general manager and active partner in a new station in Livingston, Tennessee. When this inconsistency was pointed out he attempted to explain away the general manager representation, saying in effect, "Oh, I didn't mean it." The Commission accepted this excuse and believed the 1956 ill health representation. But then the evidentiary hearing followed, in which it was shown that Crowder had made his decision to sell WHBT and WDEH at least as early as June 1955. Thus Crowder's sworn "true facts" explanation was exploded. Crowder then tried another explanation, claiming that the WDEH sale was necessitated by problems he had with managers there. But even this second-thought explanation couldn't cover the WHBT sale, for the record shows that he was having no managerial, commercial, or health problems in Harriman. Try as he might, Crowder wasn't able to spin an explanation covering all of the inconsistencies in his previous sworn conflicting representations to the Commission. He ran a crooked course which at the end left him somewhere behind his own starting line.

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[13] 122 U.S. App. D.C. 127, 351 F.2d 824 (1965), *cert. denied sub. nom. WWIZ, Inc. v. F.C.C.*, 383 U.S. 967, 86 S. Ct. 1272, rehearing denied 384 U.S. 947, 86 S. Ct. 1455.

The appellant tries to find reversible error in the Commission's utilization in the final decisions of his misrepresentation over the years anent the ownership of another business in Harriman. His basic argument on this point is that an inadvertent error in one application in 1950 was mechanically reproduced in exactly the same form by secretaries and others and hence the misrepresentation in the many applications over the years was but a repetition of the first one. But the record unequivocally refutes such contention, showing that the misrepresentation was made in varying ways and phrases, as for example, "100% owner, 1944 to present" in the 1961 application, and as "Harriman Billiard Parlor, Owner since 1944" in yet another application. The appellant's contention that the ownership misrepresentation in the many applications over the years was simply a mistake repeated mechanically without his awareness, begs credulity. That he must make such a baseless argument is an indication, however, of the lack of merit in his appeal.

Based on Crowder's track record, the probabilities are substantial that even his most recent "explanation" for the sales, *viz.*, managers of WDEH being more interested, respectively, in secretaries and partisan politics than in financially successful radio operation, would be recanted or varied in any subsequent inquiry into the transactions. No wonder the Commission held that Crowder was unbelievable; no wonder it held that it could not find Crowder qualified to be a licensee. A contrary result would in effect be an announcement that applicants for a broadcast facility to operate in the public interest are free to make any representations they choose, and if such representations are subsequently shown to be untrue may then commence proffering a series of explanations until they find one which sticks. This is what is involved in the present case, and with such recognition of the basic issue the Commission's resolution of that part of the record concerning the conflict in testimony between Crowder and Mr. Burn is both reasonable and sound. Crowder's actions and pattern of conduct in attempting to mislead the Commission destroyed his own credibility, and thus on the question of whether Crowder was telling the truth in denying that he ever had any conversation with Mr.

Burn or whether Mr. Burn's testimony as to the occurrence was correct, there was no ground upon which Crowder could be found to be the truthful one.

In dealing with concepts like trafficking, particularly insightful judgments are provided by the agencies who have the benefit of experience and can see the pattern from a series of transactions. Here, the Commission's conclusions are supported by substantial evidence, and even assuming that the Examiner's clearance of Crowder reflects a possible disposition of the case it does not negative the Commission's conclusion as a permissible view of the significant facts shown by the evidence. It was "for the Commission to measure the force of the various vectors and to chart the resultant in the parallelogram of forces." *Lorain Journal, supra,* 351 F.2d at 828. The appellant's plea to this Court that he prefers the Examiner's proposed favorable resolution of the issue to the Commission's unfavorable decision is not unexpected, because it is all that the appellant can plead. Crowder stands proved by the record as unqualified. He failed utterly to meet the burden of proof with respect to the trafficking issue, "a sensitive one vitally affecting the public interest represented by the Act administered by the Commission." *Folkways, supra.* The Commission's decision should be affirmed.

ARGUMENT

I.

The Heart of This Case Is Crowder's Attempt To Deceive the Commission, Particularly with Respect to the Sensitive Trafficking Issue, and the Commission Correctly Concluded that His Disqualification Was Required.

The thrust of Crowder's appeal is that the Commission couldn't reasonably have found trafficking in this case because there were only three stations involved and the transactions in which he engaged with respect thereto spanned a fourteen year period. To support his argument, Crowder addresses himself to other cases in which trafficking questions were considered and says, in effect, that his pattern doesn't fit any of them. He argues, for example, that some broadcasters have sold more stations and more frequently than he, and have been cleared on a trafficking count, so he should have been given the instant grant for another station in Harriman where he had one previously but sold it at a profit. Crowder's brief concedes that the cases in the trafficking area involved "varying factual patterns" (Crowder Brief, p. 19), and since this is so he destroys his own contention that results in trafficking cases must be the same. Too, Crowder studiously avoids the test which is applicable to this case, *i.e.*, this Court's opinion when the matter was first before it in *Folkways Broadcasting Co., Inc. v. F.C.C.*, __ U.S. App. D.C. __, 375 F.2d 299 (1967). It is clear that this trafficking case involves an ingredient not found in those cited by Crowder, *viz.*, Crowder's inconsistent representations to the Commission and a pattern of conduct on his part designed to preclude Commission investigation of the sensitive question.

As distilled in the Counterstatement, the record shows a pattern of false reports, concealments and inconsistent representations by Crowder to the Commission. An applicant or a licensee has a duty to be candid, frank, and fair in his reports to the agency, because it is the assumption of truthfulness and candor in such reports upon which the regulatory agency must rely. Without that assumption the regulatory system, particularly when functioning in sensitive public interest areas, would be rendered inoperative. *Lorain Journal Co. v. F.C.C., supra; Hamlin Testing Laboratories, Inc. v. A.E.C.*, 357 F.2d 632 (6th Cir. 1966). This is not a new principle, but has been so long established that it is part and parcel of the Communications Act and the Commission's fulfillment of its statutory responsibilities thereunder. Licenses are issued on the basis of representations made in applications, as the agency pointed out in *American Southern Broadcasters*, 13 R.R. 927, 945 (1957):

> "The Commission should be able to and does rely upon information set forth in applications and reiter-

> ated under oath in proceedings such as this [there involving an applicant's financial qualifications]".

And see, *Walter T. Gaines*, 17 R.R. 163 (1958).

The proposition that those who desire to obtain broadcast authorizations to operate in the public interest can fairly be held to a high standard of conduct with respect to reports and representations to the regulatory agency is too well established to warrant an undue extension of this brief by a discussion thereof. The cases need not be collected; they are legion. As this Court stated in *Lorain Journal Co. v. F.C.C.*, 122 U.S. App. D.C. 127, 351 F.2d (1965), *cert. denied sub nom. WWIZ, Inc. v. F.C.C.*, 383 U.S. 967, 86 S. Ct. 1272, rehearing denied, 384 U.S. 947, 86 S. Ct. 1455: "A cardinal assumption of the regulatory system is undercut by a pattern of false or evasive reports". (351 F.2d at 830). This is so, even if the evasions or concealments be of immaterial matters, since "The fact of concealment may be more significant than the facts concealed." *F.C.C. v. WOKO, Inc.*, 329 U.S. 223, 227, 67 S. Ct. 213, 215 (1946).

An applicant's duty to be candid and accurate is even higher when the matter involved is a sensitive one, such as trafficking, as this Court pointed out in *Folkways, supra*. Inconsistent representations under a "sensitive" issue would require disqualification. *Hamlin Testing Laboratories, supra*. Crowder was given an opportunity to resolve the substantial questions favorably, but it is clear that on the basis of this record he did not do so. It is just as clear that the *Folkways* trafficking test, if you will, was properly the decisional standard against which the Commission evaluated and determined the matters adduced on the record before it.

In arguing generally that the Commission's decision to disqualify Crowder is not based upon substantial evidence, the appellant tries to obscure the misrepresentation made in the 1956 WLIV application. Commencing at p. 32 of his brief, Crowder argues that the WLIV general manager misrepresentation had no nexus to a trafficking question, but this misses the point entirely. In an effort to explain away the obvious inconsistency between the WLIV representation and the oft repeated representation that the 1956 sales of the Harriman and Sweetwater stations were forced by ill health of such magnitude that he had to withdraw from broadcasting, Crowder had to admit to a deliberate misrepresentation with respect to WLIV, saying that contrary to his general managership representation to the Commission, he had a clear understanding with his brother-in-law partner that he would not in fact be the general manager and would have but severely limited activities and only in the initial states of that station's life. These findings are amply supported by the record, and it is of more than passing interest to note that Crowder does not quarrel at all with the findings, but only with the use made of them by the Commission in evaluating Crowder's reliability and credibility.

In attempting to gainsay the proved concealment with respect to WLIV, Crowder has overlooked such cases as *Hall v. F.C.C.*, 99 U.S. App. D.C. 86, 94-96, 237 F.2d 567, 575-577 (1956). As this Court there held, a misrepresentation to the Commission cannot be considered nugatory on the theory that the Commission would have acted similarly even if the truth had been revealed. There is a duty, the Court said, "to disclose to the Commission any facet of a proposal as to which there may be a mental reservation, no matter how far advanced the proposal or rudimentary the reservation." The record here shows Crowder's deliberate failure to abide by that duty, and the Commission quite properly can decline to place any reliance on him now. *Ibid.*

Turning to the record upon which this appeal is brought, we find numerous other instances where Crowder attempted deception of or concealment from the Commission. The whole matter of the Harriman Billiard Parlor, discussed in more detail, *infra*, forms a conclusion that forthrightness and candor are elements not possessed by Crowder. The demonstrated proclivity to deceive in the successive explanations offered to the Commission for the 1956 sales of stations WHBT and WDEH precludes reliance on any representations made by Crowder. The appellant's backing and filling brands him as dishonest with the Commission. He has no ground, then, upon which to posit a claim that the Commission should have accepted his personal unsupported statement of a "no trafficking" intent as dispositive of the case.

Crowder contends that the Commission found him guilty of trafficking in licenses when "any reasonable analysis" of his fact pattern would require the conclusion that the trafficking could involve only one station, "WDEH, the Sweetwater station Crowder owned for two years." (App. Brief, p. 20). Preliminarily it must be noted that the appellant seeks to crowd the issue unfairly because the record shows that station WDEH was placed on the air in February 1955, and four months thereafter, on June 22, 1955 was put in the hands of a broker for sale. The fact that the station wasn't finally disposed of until 1956 was in part due to Crowder's insistence upon favorable terms and in part due to the problems the proposed purchaser was having in obtaining Commission approval of the sale.

Moreover, Crowder's attempt to claim that only the WDEH transaction is questionable completely misses the point enunciated by this Court in *Folkways, supra.* When the instant matter was before the Court the first time, Crowder also argued that the trafficking question arising from his reapplication for the Harriman market was not pertinent because he had previously operated WHBT for six years and only WDEH was held for a short period of time. On that argument the Court in its opinion pointed out:

> "The fact that Crowder, as the Commission states, operated station WHBT from 1950 to 1956 before selling it does not answer the question; the question is not whether the trafficking intent arose prior to 1950, but whether it arose at all. As to that, events which did not begin until 1956 are sufficient to require the probing of an evidentiary hearing."
>
> (375 F.2d at 302.)

And the hearing probe turned up evidence which, to use Crowder's own term of "under any reasonable analysis", requires a conclusion that Crowder did traffick in licenses both with respect to WHBT and WDEH, as the Commission concluded.

The cases cited by Crowder save him not at all. That he can cite some cases involving the trafficking question is but an indication that a trafficking inquiry is a legitimate one and will be considered by the Commission prior to any grant. The fact that in the cases cited by Crowder the Commission resolved the issue favorably to the applicant on the basis of the facts there involved nowise makes the proposition, urged here by Crowder, that the issue should perforce have been resolved favorably to him here. As Crowder concedes, the decisions in the trafficking area have varying factual patterns. (App. Br., p. 19). This simply means that possible trafficking can be as varied as a party's ability or imagination. See, *e.g.*, *Edina Corp.*, 4 F.C.C.2d 29 (Rev. Bd., Commission review denied, Nov. 4, 1966). It also means that because of the sensitive nature of the trafficking question the Commission will look at varying factual patterns and if trafficking is a possibility will explore it and grant a requested authorization only if it is satisfied sufficiently that it is not present; here Crowder had an opportunity to satisfy the legitimate inquiry, but did not do so.

Crowder fails to consider such cases as *Franklin Broadcasting Co.*, 22 R.R. 880 (1962), where the Commission held that although past transactions standing alone might not provide any basis for concluding that a party has been engaged in trafficking in licenses, "An entirely different picture could emerge when the past transactions are considered in conjunction with a proposed transaction." In the Crowder case, it was the attempted re-entry onto the Harriman broadcasting scene where he had previously owned but sold a station at a profit which brought his past transactions into play. The significance of this point was noted by the Commission in the decision here, where it observed that "if his primary interest was in station operation in that community [Harriman], the normal course would have been to continue the operation of station WHBT, not to sell it at a profit and then seek another license." (R. 1121).

Before closing on this point, we believe it appropriate to comment on Crowder's attempted use of the Commission's initial action in this case. At page 22 of his brief, Crowder sets forth the Commission's initial clearance of him on the trafficking question and contends that since the Commission once accepted his proffered explanations it is inconsistent of the agency to disbelieve him now and find indications of trafficking-in-licenses. When it is remembered that Crowder extracted the initial grant without a hearing from the Commission by the sworn "true facts" explanations of ill health which were exploded during the hearing required by the Court, Crowder's instant argument of inconsistencies in the Commission's treatment of him becomes grotesque. In effect, he is saying: "I made representations to the Commission which it accepted and thereby got a grant without a hearing. A hearing was required, however, and those representations were shown to be disbelievable, but I made new representations about bad managers at Sweetwater. Now the Commission won't believe me. This is inconsistent; the Commission believed me the first time around, why won't it believe the second story?" The pathetic question answers itself. See *Hall v. F.C.C.*, *supra*.

II.

The Tangled Web Woven by Crowder in His Successive Versions Makes Any Explanation for His Conduct Unbelievable.

"Oh, what a tangled web we weave,
When first we practice to deceive!"[14]

In the decision on appeal the Commission concluded, after evaluating all the facts of record, that it could not accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health. (R. 1125). One point shines through the Commission decision, which is that Crowder defeated himself, so to speak, and cannot lay the denial of his application to anyone else. As the Commission emphasized in the decision below, "We wish it to be clear that we believe Crowder has failed to meet his burden of proof without regard to the Burn testimony." (R. 1123). In short, Crowder's own successive, inconsistent and conflicting explanations wove a web from which his credibility could not be extracted.

The chronology of development of Crowder's assorted explanations is important. When Crowder sold stations WHBT and WDEH in 1956, he simply told the Commission he wanted to withdraw from broadcasting in those two communities. Even though the application form called upon him to give a full account of his reasons for the sale, he made no further explanation. No mention was made of health problems; no mention was made of operational problems, nor yet of financial problems. After Crowder filed his instant application to acquire another station in Harriman where he had previously owned and sold WHBT, at a profit of some $61,000, Folkways' petition raised quite naturally the basic question of whether Crowder was seeking his second Harriman station for a subsequent sale. To avoid Commission inquiry of the trafficking question thus raised, Crowder claimed that the "true facts" for the 1956 sales of this first Harriman station and of WDEH was illness of such magnitude that he was forced to sell these stations. In a sworn opposition pleading he stated:

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[14] Sir Walter Scott, Canto VI, Stanza 17, "Marmion."

> "The true facts, which are conspicuous by their absence in the Folkways petition, are that Crowder was forced to sell his radio interests due to ill health. Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry."

However, it was then pointed out that this was a most peculiar explanation for the 1956 sales because at the same time he was applying, with his brother-in-law, for a new station in Livingston, Tennessee, in which Crowder represented that he would be the general manager, and successive reports listed him as the general manager.

The Commission questioned Crowder about this apparent inconsistency but he still fought to avoid the developing trafficking question and so offered a sworn explanation that the general manager representation had not been what it had appeared to be. He claimed it was but an inartful way of saying that he had proposed to hire the attorneys and engineers and assist in early construction problems. He thus led the Commission to accept an explanation which preserved the representation of ill health in 1956 as the reasons for the sales, thus foreclosing further consideration of the trafficking question.

Neither in the sworn "explanation" upon which the agency relied to make an initial grant without a hearing, nor yet even to this Court when such grant was challenged by Folkways, did Crowder once suggest that the 1956 sales of WHBT and WDEH were occasioned by anything other than ill health in that year. In point of fact, the language of his representation to the Commission in that connection was obviously calculated to, and did in fact, lead the Commission to believe that the ill health was in 1956, the year of the sales. For example, after the Commission inquired of Crowder about the apparent inconsistencies in the 1956 picture, he responded:

> "in 1956, Mr. F. L. Crowder owned two broadcast properties, one in Sweetwater and the other in Harriman, Tennessee. His health became such that he could no longer continue in the day-to-day active operation thereof, and for that reason both stations were sold in that year. It was his intention then to withdraw from such activity, and the Commission was so informed.
>
> "*That same year*, his brother-in-law, Mr. R. H. McCoin, was employed and wished to become engaged in broadcasting, having sold his car agency in 1955. Because he was totally inexperienced in such matters, Mr. McCoin looked to Mr. Crowder for guidance and wanted him to have a 50% interest. * * *
>
> "In sum, because of the then state of his health Mr. Crowder's last operational activities upon a routine basis in the broadcast field occurred in 1956 before he disposed of his interests in the Sweetwater and Harriman stations. * * *" (R. 311-312, emphasis supplied).

In his first explanation to this Court, Crowder was no less explicit in suggesting that it was ill health in 1956, and only ill health which commenced that year, which gave rise to the questioned sales. For example, in contending that a trafficking-in-licenses issue was not raised by the questioned transactions Crowder said:

> "In other words, in eighteen years he owned all or a part of three radio stations, one of which was held for ten years, one for eight years, and one for two years. In 1956, Mr. Crowder sold WHBT (held for 10 years) and WDEH (held for two years) for reasons of health. That same year he acquired a 50 percent interest in WLIV (which he held for eight years) as an accommodation to his brother-in-law. . . ." (Crowder's Brief, Case No. 19,971, p. 10).

* * *

> "In 1956, Mr. Crowder informed the Commission that he wished to discontinue his broadcast activity in Harriman. He did not explain at that time that his health dictated that desire, although Folkways believes that he should have done so." (*Ibid.*, p. 11).

* * *

> "The Commission, however, inquired of Mr. Crowder as to these matters [WHBT and WDEH sales and WLIV acquisitions], and had before it his uncontested representations as to his health in 1956, the extent and nature of his duties with WLIV, and his statements that nothing was represented to the Commission with intent to mislead or to confuse." (*Ibid.*, p. 18).

It should be noted here that after Crowder filed his second explanation with the Commission about the inconsistency in the previous representations about the 1956 activities, Folkways pointed out that in that same year he acquired and began operating another substantial business activity, namely the bottling plant in Livingston. In making its first grant without a hearing, the Commission did not pass upon this. However, Crowder apparently recognized the aspect of inconsistency of the substantial bottling plant activity with his claim of ill health in 1956, so he attempted to explain away the bottling plant operation in this Court. Departing from the record then on appeal, Crowder contended that albeit he purchased the bottling plant in 1956 "He has never operated it personally, however, the original manager having done so after Mr. Crowder's purchase of the business and more recently Mr. Crowder's son being so engaged." (Crowder Brief, Case No. 19,971, p. 2, fn. 2).

At this juncture, it is abundantly clear that Crowder was saying emphatically that ill health in 1956 forced the sale of WHBT, Harriman, and WDEH, Sweetwater, and that anything in 1956 inconsistent with such ill health was itself not true or accurate.

Now we come to the matters brought out for the first time in the evidentiary hearing which was required by this

Court. Folkways subpoenaed the records of the broker who handled the WHBT and WDEH sales, and from those records it was shown that Crowder listed the stations for sale on June 22, 1955. June 1955 was not 1956, of course, and the discovered documents were inconsistent with Crowder's repeated representation that ill health in 1956 necessitated the sale. The web of explanation which Crowder had woven for himself to that juncture was fairly tight, but he attempted to spin another thread of explanation within the limited room he had left. This new thread, first spun in May 1967 during the course of the evidentiary hearing after Folkways had put the broker's documents in evidence, was managerial problems at WDEH. Crowder now said that in February of 1955, when WDEH first went on the air the manager, by the name of Lee, paid more attention to the office secretary than to business which created financial problems for the station. Crowder fired Lee, he said, and engaged a Mr. Foster, only to find that under him business kept "going down, going down" because Foster was taking sides in a local partisan political situation. This made him a nervous wreck and brought forth the decision to sell station WDEH, not really in 1956 as he had previously represented to the Commission (and to this Court), but in June of 1955, Crowder said.[15]

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[15] Crowder's attempt to find support for even his third explanation for the sale of the Sweetwater station, *viz.*, managerial problems, by reference to a statement found in the Commission's files by A. D. Smith, Jr. (App. Br., p. 30), is without merit. First of all, Crowder didn't produce A. D. Smith, Jr. and the reference in his brief is to an untested third party statement found in the files. In any event, it should be noted that Crowder is attempting to use only a portion of Mr. Smith's statement, and it is not without significance that Crowder avoids the following portion thereof: "Mr. Crowder was fortunate in securing a new manager who has shown a very steady increase in business every month." This of course negatives Crowder's explanations offered now that the sale of WDEH was necessitated because of financial problems caused by managers. (See R. 1088 and 1089).

This explanation placed a further problem in Crowder's hands, however, because it was brought out that Mr. Foster, the second manager, did not actually leave station WDEH until 1956. If Foster caused the problems which resulted in the decision to sell, why was he kept on, Crowder was asked. When Mr. Lee caused problems he was fired, Crowder was reminded, yet Mr. Foster who was causing business to go "down," was retained. Why? Crowder then offered an explanation that he had an oral agreement with Foster to retain the latter for a period of a year, but as the Commission's Broadcast Bureau pointed out below, it is more likely that had Foster caused the problem which led to Crowder's decision to sell WDEH in June 1955, as the most recent explanation suggested, Crowder certainly would have let Foster go just as he fired Lee. (Tr. 1818).[16]

It is not without significance, we submit that even in trying to come up with a second explanation for the sales, Crowder limited his testimony to the Sweetwater situation. As may be seen from the portion of the transcript quoted by the appellant at page 40 of its brief, Crowder's contention that operational problems necessitated the sale was

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[16] Although Crowder's third (or was it his fourth?) explanation for the sale of WDEH was that managerial problems in 1955 resulted in the station's revenues "going down, going down" (Tr. 1484), information given to the broker who handled the sale, which information was developed on the record as obviously coming from Crowder (Tr. 1025-1026), showed the following:

Station WDEH, First 6 Months of Operation

	Bank Deposits
February	$ 319.65
March	2,204.40
April	3,711.66
May	4,013.43
June	4,191.91
July	3,672.02
Total	$18,113.07

(See R. 646)

limited to the WDEH sale, *e.g.* "So in about three months, frankly, I was a nervous wreck. I decided to sell my radio station and get out of the radio business." The singular "station" was not inadvertent. Although Crowder had the burden of proof under the trafficking issue, he made no attempt to adduce medical records or produce a doctor to support the really significant question of whether his health was no terrible in 1956 that he was forced to retire from the broadcasting business in Harriman and Sweetwater pursuant to a doctor's advice.[17] When counsel for Folkways attempted to go into the medical question by seeking to ascertain whether Crowder had included the alleged 1956 health breakdown or medical advice relative thereto in applications for insurance thereafter, the examination was cut off by the Examiner upon objection by Crowder's counsel. It was then suggested that any conversation with the doctor would have been but a casual one only, such as at a social event or on the golf course, and not part of any medical treatment. (Tr. 1687-1688).

As above indicated, part of the explanation problem created by Crowder was the 1956 acquisition of the bottling plant in Livingston. When first examined at the evidentiary hearing, Crowder claimed that he had lived continuously at a specific address in Harriman since 1946. (Tr. 202). Folkways then showed, however, that in December of 1956 Crowder and his wife purchased a substantial residence in Livingston, suggesting that Crowder found his business activities in Livingston so encompassing that it was necessary for him to buy living quarters there. To explain why the Livingston house was purchased, Crowder claimed that he had bought it without his wife's knowledge and that she objected upon being apprised of the purchase, so it was sold. However, the subsequent sale did not occur for three years and in the meantime Crowder used the house for weekday living in Livingston. After the house was sold he built living quarters above the bottling plant and continued to stay there weekdays, returning to Harriman on weekends. The bottling plant operation was a substantial one, with a franchise area encompassing 15 counties in Tennessee and Kentucky. Crowder purchased material, hired the crews and directly supervised them in expanding the physical facilities, and he substantially enlarged the plant's business. In point of fact, he claimed that the bottling plant operation was so time consuming that he couldn't even go near WLIV in Livingston for months at a time. On the evidentiary hearing record he thus intensified the inconsistency arising from the bottling plant activities and a claim of ill health of such magnitude that he had to give up his Harriman and Sweetwater businesses. (See R. 1175-76).

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[17] On his direct examination, Crowder made no reference to medical advice, and when asked by counsel for the Broadcast Bureau whether he had consulted a doctor, Crowder said he did but conceded that the advice was the rather off-hand comment that "Well, the only thing I can tell you is to get out of the radio business if that is what is causing you to be so nervous." (Tr. 1701).

It is quite clear, we think, that Crowder got stuck by giving the first sworn explanation that it was 1956 ill health which caused the radio station slaes. This confronted him with the conflict between that representation and the sworn representation in the 1956 Livingston application that he was to be the WLIV general manager. He told the Commission that the general manager representation was not quite correct and such excuse was once accepted by the agency. He continued to stand on the premises of the first explanation, however, that it was ill health in 1956 which necessitated the sales of WHBT and WDEH. When this part of his previously accepted explanation was exploded in his face by Folkways subpoenaing the broker's records and showing the listing of the stations for sale in 1955, the bad manager explanation was brought forth. Whatever may be said about the question of the abilities or proclivities of Crowder's managers at WDEH, it is passing strange that he waited so long to mention them as the problems occasioning the sale. He didn't give this as his reason in 1956 when he sold the stations, even though the application form asks for a full explanation: he didn't mention the problem in 1956 when the Commission advised him that the reasons for a transfer are significant in the Commission's consideration of a proposed sale and requested a fuller statement of reasons for the WHBT sale (R. 1089); he didn't tell it to the Commission in his sworn "true facts" explanation filed on January 8, 1963; he didn't mention it to the Commission in his December 27, 1965 verified explanation when specifically called upon to comment on the 1956 inconsistencies; he didn't mention it to this Court when the question was first argued in Case No. 19,971; and he didn't even mention it when he was first on the stand in the 1967 evidentiary hearing. He raised it only after the broker's documents were put in the record by Folkways.

Of crushing weight, however, is the fact that none of the alleged Sweetwater problems existed in Harriman, although Crowder also listed that station for sale at the same time. In connection with station WHBT, Crowder's associate and long-time employee, Walter Scarbrough, testified that the station was operating smoothly, there were no financial problems, and Crowder neither complained of nor gave any indication of illness. Crowder was thus deprived of a retreat to "bad manager" excuse for the sale of WHBT. He was deprived of a retreat to an ill health claim in either 1955 or 1956 with respect to Harriman. He finally stood naked on the record, with the web previously woven by him now virtually torn away. In such light, the Commission's conclusion that

> "We are not satisfied as to the credibility of Crowder"

and

> "In sum, we cannot accept as credible Crowder's testimony that he was forced to sell WHBT and WDEH because of ill health"

were eminently sound and supported by substantial evidence. *Lorain Journal Co. v. F.C.C., supra; Immaculate Conception Church v. F.C.C.*, 116 U.S. App. D.C. 73, 320 F.2d 795, cert. denied, 375 U.S. 904, 84 S. Ct. 196 (1963).

III.

Crowder's Contention that His Misrepresentations About Ownership of the Other Harriman Business Were But Immaterial, Mechanical Errors Is Without Support.

Commencing in 1950, Crowder continuously represented to the Commission that since 1944 he had been the 100% owner of the Harriman Billiard Parlor. The representation of such complete ownership was set forth in various fashions, such as:

> "F. L. Crowder, Harriman Billiard Parlor,
> 100% Owner, 1944 to present",

as

> "Harriman Billiard Parlor (Owner)",

as

> "Owner, Harriman Billiard Parlor
> Harriman, Tennessee",

and

> "Harriman Billiard Parlor,
> Harriman, Tennessee
> Owned by F. L. Crowder"[18]

His instant application, filed in December of 1961, contained the representation that he was the 100% owner and had been since 1944. In his financial statement filed by him for the Commission's use in ascertaining financial qualifications, he listed the billiard parlor equipment and real estate. In the pre-grant pleading stage, when Folkways petitioned to deny the application on the issue, *inter alia*, as to the sufficiency of Crowder's program operation, he adverted to the fact that he was a businessman in Harriman as a basis for his claimed familiarity with the community's needs. Then in making the initial grant without a hearing the Commission reviewed his application and pleading and finding therein the representation of 100% ownership of the Harriman business it believed there was a sufficient familiarity on Crowder's part with programming needs of Harriman, saying:

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[18] A copy of the pertinent pages of some of the applications showing the varying ways in which Crowder made his representations of 100% ownership is set out in an appendix to this brief.

> "At present he is the owner of a business in Harriman. . . ." (R. 326).[19]

During the evidentiary hearing it was developed by Folkways in cross-examination of Crowder that he is not the owner of the Harriman Billiard Parlor and in fact has had but a partnership interest therein since 1948. (Tr. 243-244). Crowder offered no explanation for the many contrary representations of 100% ownership which were found in the applications he had occasion to file with the Commission since 1950, simply claiming that the entries were erroneous. (Tr. 324-325). He made no explanation as to how or why the alleged "error" found its way into so many applications in such varying forms. Furthermore, the record shows that Crowder knew how to indicate a partnership interest as contrasted with a sole proprietorship, making "partnership interest" entries with respect to Audio Broadcasters (WLIV), for example. (See Apx. p. 1).

In his instant brief, however, the appellant argues without any reference to the record that the oft repeated misrepresentation, expressed in varying forms as shown above, was occasioned by an inadvertent error in 1950, picked up and repeated "by rote." (App. Br., p. 24) That his argument has absolutely no foundation in the record, and more, is controverted by the evidence of record which shows that the misrepresented ownership was expressed in varying ways, is clear from just the few examples cited above. In view of the absolute baselessness of the appellant's argument, we do not think an extended discussion of it is warranted. Nevertheless, to lay to rest any questions in this connection a few additional observations may be in order.

---

[19] Another question raised by Folkways was the sufficiency of Crowder's resources for a finding of financial qualification. Crowder opposed a financial inquiry on the grounds that the information filed by him with the Commission demonstrated sufficient backstopping to meet the Commission's financial ability test, *viz.*, operation without revenues for a year assuming no revenues are available, the so-called *Ultravision* test. 5 R.R.2d 343 (1965). The Commission accepted Crowder's representations and specifically adverted to his balance sheet's showing of net current assets, which included the billiard parlor equipment listed at $15,000 in addition to the real estate.

First of all, to the extent that Crowder now contends that the oft repeated "error" involved but a minor business interest unrelated to broadcasting and is thus without significance, his argument is answered by clear pronouncements to the contrary by both this Court and the U.S. Supreme Court. For example, as the Supreme Court pointed out in *F.C.C. v. WOKO, Inc.*, 329 U.S. 233, 237 (1946):

> "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deception as well as by material and persuasive ones."

There is simply no way the appellant can now excuse or justify the varying ways in which he attempted to and in fact did mislead the Commission as to the ownership of his other Harriman business.

Finally, on this point, it should be noted that although the appellant contends that his failure to remember the sale of the business interest may well give rise to a question of whether he is prone to carelessness (and we contend that it is substantially more than carelessness), the established precedents are against Crowder's assertion that the Commission erroneously considered the matter. In this case, Crowder's reliability was in issue, because upon it rode the whole question of whether his assertions that he was forced to sell WHBT and WDEH in 1956 because of ill health could be accepted. It is in just such sensitive areas where even mistakes and carelessness can disqualify an applicant; *a fortiori* proved misrepresentations and concealments validly bring forth that result. *Charles P. B. Pinson, Inc. v. F.C.C.*, 116

U.S. App. D.C. 106, 321 F.2d 372 (1963); *E. G. Robinson V. F.C.C.*, 118 U.S. App. D.C. 144, 334 F.2d 534, cert. denied 379 U.S. 843 (1964).

IV.

Crowder Begs the Record When He Argues that the Commission's Decision Is Without Support.

A. The Commission's Disposition of the Crowder-Burn Testimonial Conflict Is Supported by the Record.

Crowder directs a significant portion of his appeal to the Commission's determination on the Crowder-Burn testimonial conflict. As indicated in the Counterstatement, one of the witnesses in the hearing below was Mr. Harry T. Burn, a banker and lawyer from Rockwood, Tennessee. As recognized in the Commission decision, Mr. Burn was not without interest in the proceeding, since his bank had bought from Crowder the note taken back by the latter for the deferred portion of the purchase price when he sold WHBT in 1956, with the note having an unpaid balance of approximately $23,000 at the time Burn's bank acquired it in 1961. Crowder's filing of his instant application for another station at Harriman, which would compete with the security assigned with the note, led the bank thrugh Burn, to file a petition to deny the Crowder application on that ground. Furthermore, Mr. Burn was a stockholder with Folkways' President (Mr. Crosthwait) in another venture, WOVE, Inc., and the Rockwood bank had provided financial assistance to both WHBT and WOVE, Inc. In his brief, the appellant makes a big point of these factors indicating interest on Burn's part, and attacks Burn's credibility on the grounds that he misstated his position with WOVE, Inc. This portion of Crowder's attack on the Commission's decision (App. Brief, p. 41, ff) should be read against this Court's observations in *Charles P. B. Pinson, Inc. v. F.C.C., supra:*

> "Appellant further argues that Mr. Gladstone's testimony should have been totally disregarded because it 'is hardly believable [that] any human being' would not have been prejudiced beyond credibility by the prior accusations made against him by appellant. But one cannot disqualify the chief opposition witness by attacking him and then claiming prejudice. The credibility of the witness in these circumstances was for the trier of fact." (321 F.2d at 375).

In his onslaught on Burn, the appellant both ignores portions of the record and seeks to elide the Commission's actual limited use of the Crowder-Burn matter in the decision here on appeal. Turning to the last point first, it is clear beyond doubt from the Commission's decision that Crowder lost the case himself, so to speak, by his own demonstrations of lack of credibility. As the Commission held in the decision on appeal, "we conclude that Crowder has failed adequately to reconcile his inconsistent representations and has fallen short of meeting his burden of proof on the trafficking issue" and "We are not satisfied as to the credibility of Crowder [adverting to the WLIV deliberate misrepresentation]." (R. 1121-22). Furthermore, with specific reference to the Crowder-Burn testimonial conflict, the Commission pointed out that it was not deciding the case against Crowder on account of the Burn testimony, ",we wish it to be clear that we believe Crowder has failed to meet his burden of proof without regard to the Burn testimony." (R. 1123).

The appellant tries to de-emphasize the significance of Crowder's complete denial of any conversation with Burn concerning broadcasting practices or philosophies. Crowder unequivocally stated that he had only two conversations with Burn, once in 1953 when the remote studio lease was entered into and the other in 1961 when he assigned the deferred purchase money note to Burn's bank. The appellant argues, *inter alia*, that the Commission improperly read Crowder's testimony that he "had two business dealings with Mr. Burn in my life" as to mean that he talked with Burn only twice

(App. Br., p. 43 and fn. 66), but the appellant fails to note that elsewhere on the record Crowder did in fact categorically assert that he talked with Burn only twice. Not acknowledged by the appellant in his brief is the portion of the record where, upon questions by the Broadcast Bureau counsel as to whether the two business dealings were the only occasions of discussions with Burn, Crowder so claimed:

> "Q. Just so that I am absolutely clear on this you are stating categorically that the only occasion that you could recall, aside from the political meeting that you mentioned and the ones mentioned in your testimony, the only times that you ever had any contact with this man was on the two occasions which we have previously mentioned in my questioning?
>
> "A. Business contacts.
>
> "Q. Business contacts right now.
>
> "A. Right.
>
> "Q. Any other type of contact?
>
> "A. Not that I recall.
>
> "Q. Walking along the street?
>
> "A. No, sir." (Tr. 1713).

Moreover, in denying any conversation with Burn, Crowder stated that he would not have had sufficient background in broadcast matters to have discussed the operational or economic features claimed by Crowder to have been mentioned in the conversation. In view of Crowder's experience in the field, in view of his own representation in the WLIV application that the operational financial aspects were estimated by him on the basis of his experience in broadcasting, to cite but a few indications of his experience, the Commission quite properly noted in the final decision an inability to accept the premise of Crowder's disavowal of any conversation. In evaluating Crowder's denial, the Commission opined.

> "We find it difficult to believe that the WHBT remote studios would or could have been built by the bank in its building in Rockwood without any contact at all between Burn and Crowder, who was then the sole owner of WHBT and its general man-

> ager. * * * Further, it is reasonable to conclude that Crowder, having been in broadcasting since 1950, possessed the type of knowledge in 1961 that would have enabled him to evaluate the WHBT operation as conducted by Folkways, the present management, and relate to Burn his reasons for filing for the second station at Harriman, in apparent conflict with his indicated policy." (R. 1125).

The conclusion, then, that although there was some vagueness by Burn as to the date of the principal conversation, his testimony couldn't be wholly rejected because it was consistent with the objective evidence in the case, stands as a reasonable and justifiable evaluation of this matter. At the risk of repetition, but without any suggestion that the Commission's conclusions anent the Burn-Crowder testimonial conflict are not wholly correct, we close this point by again noting that the ultimate conclusion to deny Crowder's application was occasioned by the appellant's own misrepresentations, concealments and demonstrated proclivities to conceal, arrived at "without regard to the Burn testimony." (R. 1123).

B. Crowder's Assertion that the Examiner's Resolution of the Issue Is the Preferable One Is Not Unexpected as an Argument, but It Avails Him Naught.

Crowder contends that the Examiner rather than the Commission made the correct assay of the trafficking issue here. Both in his argument on the Commission resolution of the Crowder-Burn testimonial conflict, as well as in his arguments with respect to the Commission's overall consideration of the trafficking issue, Crowder urges that the Examiner had the right view while the Commission did not. (See *e.g.* Crowder Point 1, App. Brief, p. 14). This argument ignores the substantial line of cases represented by *Lorain Journal Co. v. F.C.C., supra.* As this Court there opined:

> "We have carefully examined the Commission's consideration of the Examiner's views because of the

> claim of appellant Journal that the Commission had failed to give sufficient weight to the Examiner's findings under the standard of Universal Camera Corp. v. NLRB, 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456 (1951). We are fully appreciative of the importance of the contribution of the hearing examiners to the maintenance of the rule of law in the decisions of administrative agencies. But their authority to render initial decisions does not mean that the various boards and commissions are relegated to the role of reviewing courts who sustain fact findings of courts of first instance unless clearly erroneous. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 364, 75 S. Ct. 855, 99 L. Ed. 1147 (1955). The responsibility for decision is placed in the Commissioners appointed by the President and confirmed by the Senate to discharge the function of administering the statutes under the agency's cognizance." (351 F.2d at 828).

In considering the appellant's argument that the initial decision was the correct one it should also be noted that in its final decision the Commission utilized substantially all of the findings of fact of the Examiner. Its difference with the Hearing Examiner was in the evaluation of those facts, particularly as they related to the sensitive issue of trafficking. In this connection, the observation of the Sixth Circuit Court is pertinent. *Hamlin Testing Laboratories, Inc. v. A.E.C.*, 357 F.2d 632, 637 (1966):

> "The Commission adopted the findings of the Hearing Examiner that the violations as charged had been committed but disagreed that they had not been willful. It took the position that there is necessity for meticulous compliance with the rules and regulations in the interest of public health and safety, and that on the entire record there was reason to doubt that the licensee would perform in an acceptable manner, that the pattern of continued violations and false reports was persuasive that the license should not be renewed, conditionally or otherwise, as recommended by the Hearing Examiner. The foregoing

> findings and conclusions are supported by substantial evidence."

We submit that the aforegoing stated principles should doom Crowder's appeal.

CONCLUSION

The first time Crowder's application for a new station in Harriman, Tennessee was before this Court, in *Folkways, supra*, the Court pointed out that the trafficking in licenses issue which had been raised by Crowder's past transactions and inconsistent explanations with respect thereto would disqualify him unless the questions were satisfactorily resolved in an evidentiary hearing, which was then required. The hearing has been held, and the Commission has entered a decision denying Crowder's application on the ground that it could not find his successive attempts to explain the questioned transactions to be credible and that he failed utterly to meet the burden of proof which was upon him under the sensitive trafficking issue. We submit that the Commission's decision is sound, reasonable and supported by substantial evidence.

For all the foregoing shown reasons, the intervenor prays that the Commission decision on appeal be affirmed and that the within party be given its costs.

Respectfully submitted,

ARTHUR H. SCHROEDER
JOHN B. KENKEL
WILLIAM M. BARNARD

808 Munsey Building
Washington, D. C. 20004

Attorney for Intervenor
Folkways Broadcasting
Company, Inc.

Of Counsel:

Miller and Schroeder
Washington, D. C.

November 27, 1967

App. 1

Broadcast Application

LEGAL QUALIFICATIONS

Section II, Page 4

Table II

BUSINESS AND FINANCIAL INTERESTS

INSTRUCTIONS: The purpose of Table II is to obtain information concerning the occupation, business, and financial interests, at the present time and during the past 5 years, of the applicant and of each party to this application named in Table I. In column (a) list the names of all individuals or organizations listed in column (a) of Table I. In column (b) state the principal occupations and businesses in which each party named is engaged at the present time or has been engaged at any time during the past 5 years, and, in addition, state any other business or financial enterprise in which such party has now or within the past 5 years has had either a 25% or greater interest or any official relationship. In each case, state in column (b) the firm name, the principal place of business, and the nature of the business engaged in. In case the party has been associated in business with any other person or persons, state the name of each such other person. In column (c) state the extent and nature of the interest, official relationship, employment, or association, giving approximate dates.

(a) Name of party	(b) Firm name, principal place of business, and nature of business	(c) Extent and nature of interest, etc. (giving dates)
F. L. Crowder	Harriman Billiard Parlor, Harriman, Tenn.	100% owner, 1944 to present
	7-Up Bottling Co., Livingston, Tenn.	100% owner, 1956 to present
	Audio Broadcasters, licensee of Radio Station WLIV, Livingston, Tenn.	50% partner, 1956 to present
	Harriman Broadcasting Co., licensee of: WHBT, Harriman, Tenn. WDEH, Sweetwater, Tenn.	100% owner: 1950-1956 1954-1956

FROM INSTANT APPLICATION R. 7

App. 2

WHBT RENEWAL APPLICATION
APRIL 27, 1955

FCC Form 303
July 1954
Section I

Form approved
Budget Bureau No. 52-R016.11

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF BROADCAST STATION LICENSE

File No. R-1164

Name and post office address of applicant (See Instruction D)

F. L. Crowder d/b as
The Harriman Broadcasting Co.
Harriman, Tennessee

Send notices and communications to the following-named person at the post office address indicated:

Norman E. Jorgensen
514 Wyatt Building, Washington

INSTRUCTIONS

A. This form is to be used in all cases when applying for Renewal of Broadcast Station License. It consists of this part, Section I, and the following sections:

Section II. Renewal Application Engineering Data

Section IV. Statement of Program Service of Broadcast Applicant

B. Prepare and file three copies of this form and all exhibits and sworn to one copy. File with Federal Communications Commission, Washington 25, D. C.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 2 of this Section. Date each exhibit.

D. The name of the applicant must be stated exactly as it appears on the current license.

E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant, (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application must be executed by applicant, if an individual; by a partner of applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 1.302, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority of attorney to act must be submitted with application.

G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

1. Renewal requested for following existing facilities

Call letters WHBT	Frequency 1230 kc	Channel No.

Power in kilowatts		Minimum hours operation daily
Night	Day	
.25	.25	16 hours

Hours of operation

Unlimited ☒ Daytime only ☐ Limited ☐	Sharing with (Specify Stations) None	Other (Specify) None

Station location

City Harriman	State Tennessee

2. Is applicant or any person directly or indirectly controlling applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? Yes ☐ No ☒

If the answer is "Yes", attach as Exhibit No. a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. (See Section 313 of the Communications Act of 1934.)

3. Attach as Exhibit No. 1 a detailed balance sheet of the applicant as at the close of a month within 90 days of the date of this application.

4. Is the applicant's Ownership Report filed with this application? (See 1.343(a) of Commission's Rules.) Yes ☒ No ☐

If answer is "No", give date of filing of last Ownership Report and call letters, station location and file number of renewal application with which it was filed.

5. Any change in the citizenship of the applicant? Yes ☐ No ☒

6. Is the applicant a representative of an alien or foreign government? Yes ☐ No ☒

7. List below other businesses in which the applicant or any officer, director, or principal stockholder (any person owning 25% or more of applicant's stock) has a 25% or more interest. List also any radio station other than the station which is the subject of this application in which any of the above named persons have any interest, and the nature and extent of their interest in the broadcast station.

Owner, Harriman Billiard Parlor
Harriman, Tennessee

Owner, Radio Station WDEH
Sweetwater, Tennessee

App. 3

WDEH RENEWAL APPLICATION
APRIL 27, 1955

FCC Form 303
July 1954
Section I

Form Approved
Budget Bureau No. 52-R016.12

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

APPLICATION FOR RENEWAL OF BROADCAST STATION LICENSE

File No. BR-3075

Name and post office address of applicant (See Instruction D)

F. L. Crowder db/as
Harriman Broadcasting Company
Harriman, Tennessee.

Send notices and communications to the following-named person at the post office address indicated:

As above

1. Renewal requested for following existing facilities

Call letters	Frequency	Channel No.
WDEH	800 kc	

Power in kilowatts: Night	Power in kilowatts: Day	Minimum hours operation daily
	.5	10 hours average

Hours of operation

	Sharing with (Specify Stations)	Other (Specify)
Unlimited ☐ Daytime only ☒ Limited ☐	None	None

Station location

City	State
Sweetwater	Tennessee

2. Is applicant or any person directly or indirectly controlling applicant, party to a suit in any Federal Court involving the monopolizing, or an attempt to monopolize radio communication directly or indirectly through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? Yes ☐ No ☒

If the answer is "Yes", attach as Exhibit No. a full description of the proceeding, identifying the court and showing where records of the proceeding may be obtained. (See Section 313 of the Communications Act of 1934.)

3. Attach as Exhibit No. 1 a detailed balance sheet of the applicant as at the close of a month within 90 days of the date of this application.

4. Is the applicant's Ownership Report filed with this application? (See 1.343(a) of Commission's Rules.) Yes ☒ No ☐

If answer is "No", give date of filing of last Ownership Report and call letters, station location and file number of renewal application with which it was filed.

5. Any change in the citizenship of the applicant? Yes ☐ No ☒

6. Is the applicant a representative of an alien or foreign government? Yes ☐ No ☒

7. List below other businesses in which the applicant or any officer, director, or principal stockholder (any person owning 10% or more of applicant's stock) has a 10% or more interest. List also any radio station other than the station which is the subject of this application in which any of the above named persons have any interest, and the nature and extent of their interest in the broadcast station.

Harriman Billiard Parlor (owner)
WHBT, Harriman, Tenn. (owner)

INSTRUCTIONS

A. This form is to be used in all cases when applying for Renewal of Broadcast Station License. It consists of this part, Section I, and the following sections:

Section II, Renewal Application Engineering Data

Section IV, Statement of Program Service of Broadcast Applicant

B. Prepare and file three copies of this form and all exhibits and swear to one copy. File with Federal Communications Commission, Washington 25, D. C.

C. Number exhibits serially in the space provided in the body of the form and list each exhibit in the space provided on page 3 of this Section. Date each exhibit.

D. The name of the applicant must be stated exactly as it appears on the current license.

E. Information called for by this application which is already on file with the Commission need not be refiled in this application provided (1) the information is now on file in another application or FCC form filed by or on behalf of this applicant; (2) the information is identified fully by reference to the file number (if any), the FCC form number, and the filing date of the application or other form containing the information and the page or paragraph referred to, and (3) after making the reference, the applicant states: "No change since date of filing." Any such reference will be considered to incorporate into this application all information, confidential or otherwise, contained in the application or other form referred to. The incorporated application or other form will thereafter, in its entirety, be open to the public.

F. This application must be executed by applicant, if an individual; by a partner of applicant, if a partnership; by an officer of applicant, if a corporation or association; or by attorney of applicant only under conditions shown in Section 1.303, Rules Relating to Practice and Procedure, in which event satisfactory evidence of disability of applicant or his absence from the Continental United States and authority of attorney to act must be submitted with application.

G. BE SURE ALL NECESSARY INFORMATION IS FURNISHED AND ALL PARAGRAPHS ARE FULLY ANSWERED. IF ANY PORTIONS OF THE APPLICATION ARE NOT APPLICABLE, SPECIFICALLY SO STATE. DEFECTIVE OR INCOMPLETE APPLICATIONS MAY BE RETURNED WITHOUT CONSIDERATION.

Broadcast Application

LEGAL QUALIFICATIONS

Section II, Page 5

Table II

BUSINESS AND FINANCIAL INTERESTS

INSTRUCTIONS: The purpose of Table II is to obtain information concerning the occupation, business, and financial interests, at the present time and during the past 5 years, of the applicant and of each party to this application named in Table I. In column (a) list the names of all individuals or organizations listed in column (a) of Table I. In column (b) state the principal occupations and businesses in which each party named is engaged at the present time or has been engaged at any time during the past 5 years, and, in addition, state any other business or financial enterprise in which each party has now or within the past 5 years has had either a 25% or greater interest or any official relationship. In each case, state in column (b) the firm name, the principal place of business, and the nature of the business engaged in. In case the party has been associated in business with any other person or persons, state the name of such such other person. In column (c) state the extent and nature of the interest, official relationship, employment, or association, giving approximate dates.

(a) Name of party	(b) Firm name, principal place of business, and nature of business	(c) Extent and nature of interest, etc (giving dates)
F. L. Crowder	Harriman Billiard Parlor Harriman, Tennessee	Owner since 1944
	Harriman Broadcasting Company (Radio Stations WHBT, Harriman, Tennessee, and WDEH, Sweetwater, Tennessee)	Owner since 1950
R. H. McCoin	Sam McCoin Grocery Company Red Boiling Springs, Tennessee	50% owner - past five years

INITIAL APPLICATION FOR WLIV
JANUARY 1966

App. 4

REPLY BRIEF FOR APPELLANT

In the

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

RECEIVED
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No. 21,222

F.L. Crowder, tr/as
HARRIMAN BROADCASTING COMPANY,
Appellant

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor.

APPEAL FROM DECISION OF THE FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 12 1967

Nathan J Paulson
CLERK

DONALD E. BILGER
1101 17th Street, N. W.
Washington, D. C. 20036
Counsel for Appellant

Of Counsel:

SMITH, PEPPER, SHACK & L'HEUREUX

Washington, D. C. · THIEL PRESS · 202 · 383-0826

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In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,222

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HARRIMAN BROADCASTING COMPANY,
Appellant

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

FOLKWAYS BROADCASTING COMPANY, INC.,
Intervenor.

APPEAL FROM DECISION OF THE
FEDERAL COMMUNICATIONS COMMISSION

REPLY BRIEF FOR APPELLANT

SUMMARY OF ARGUMENT

Both the Appellee and the Intervenor partially rely in argument upon misstatements of record evidence, and, in the case of the latter, argument is premised in part upon data not introduced into evidence, upon comments of counsel during a bench conference which in no way can be attributable to Appellant, and upon evidence which the agency did not consider in reaching its decision. Appellant's 1956 purposes given for requesting permission to assign the licenses of Station WHBT in Harriman and WDEH in Sweetwater were before the agency for consideration on three separate occasions in that year. They were also considered by the agency before its grant of the WXXL construction permit in 1966. At no time did the agency request supplementation or indicate inadequacy or incompleteness thereof. Appellant's proposed ownership interest in Station WLIV was fully disclosed to the agency before the applications to assign the WHBT and WDEH licenses were filed. The listing of Appellant in the WLIV application for permission to construct as the proposed General Manager of WLIV not only was before the agency since 1956, but Appellant's participation as such was fully explained to the agency before it granted the WXXL application. McCoin's continued listing without Appellant's knowledge of Appellant as General Manager of WLIV after 1956 cannot be a part of the factual predicate necessary to support the agency conclusion. Appellant has not indicated at any time that his illness commenced in 1956. To the contrary, he has consistently stated that his purpose in selling WHBT and WDEH in 1956 was to withdraw at that time from the radio business in Harriman and Sweetwater, respectively. That desire was motivated by illness caused in 1955 by managerial inadequacies in the absentee-owned station in Sweetwater. Appellant had no intention to engage in trafficking, and has carried the burden to establish that he did not do so.

ARGUMENT

Appellee and Intervenor continue to argue that Appellant's broadcast record demonstrates a "pattern of false reports, concealments and inconsistent representations" sufficient in number and magnitude to support the conclusion that Appellant is unfit to become again a broadcast franchise holder. In doing so, each misstates the evidence in significant measure.

Thusly, the agency argues:

1. "Crowder became the owner of WHBT on April 24, 1950, serving as its General Manager and taking an active part in its day-to-day operations." (Appellee's Brief, Page 3).

The fact is that Crowder owned one-sixth of Harriman Broadcasting Company, Inc., the licensee of WHBT from its inception in 1946 to 1950, and he became the General Manager of WHBT in 1948. On August 16, 1950, he became the sole stockholder of the licensee. He continued as General Manager until WHBT was sold on July 1, 1956.

2. "Crowder stated in 1956, in connection with both WHBT and WDEH, that he 'desire(d) to withdraw from the broadcast business'." (Appellee's Brief, Page 3).

The fact is that Crowder stated that he wished to withdraw from the broadcasting business *in Harriman and Sweetwater, respectively, at this time.*

3. "As of September 1956, Crowder . . . was the active manager of his 7-Up Bottling Plant (in Livingston) . . .". (Appellee's Brief, Page 3).

The fact is that Crowder never has been the manager of his bottling plant from the time of its purchase to the present date.

4. "Nevertheless, appellant continued to represent himself as the station's general manager in WLIV's 1958 and 1962 renewal applications". (Appellee's Brief, Page 11).

The fact is that from the time the WLIV license application signed by McCoin was filed with the Commission on November 15, 1956, Crowder had nothing to do with the station's operation or with the applications subsequently filed by McCoin. He did not even see the applications.

The Intervenor not only misstates the record, but uses in argument bench conference comments of counsel and the hearsay contents of a document not admitted into evidence. Thusly,

1. ". . . Crowder was questioned as to when he determined to sell WHBT and WDEH, but he refused to answer the question directly and claimed he didn't know". (Intervenor's Brief, Page 9).

The fact is that Crowder at no time refused to answer the questions directly. In 1967, he was being interrogated about events which had occurred more than a decade earlier. He simply stated that he did not remember when he had first spoken to the broker about selling his stations. He stated so to four separate questions about the same thing, and did state that he would certainly accept the broker's statement as to when the initial contact had occurred. The unfair innuendo used by Intervenor here is typical unfortunately of its total position and the argument it urges to buttress it.

2. "Burn could not fix the specific time of the conversation, but placed it some time between February and May of 1957". (Intervenor's Brief, Page 12).

This is only a half-truth. While Burn did not fix the month of his alleged conversation with Crowder, he did fix the year as 1957, he narrowed the month to one of two, he placed the time of day as 10 a.m., and he fixed the site as the lobby of his bank in Rockwood.

3. "Why would he (Crowder) had made the first statement that ill health in 1956 forced the sales which he himself had instituted voluntarily a year earlier if he was not in fact trying to hide the real reason for the sales sales (sic)?" (Intervenor's Brief, Page 23).

The fact is that Crowder at no time stated that he became ill in 1956. The record is consistently clear that his nervous condition originated in 1955 because of absentee ownership problems with managerial employees at WDEH, a situation which culminated in the 1956 disposal of his two stations.

4. "When counsel for Folkways attempted to go into the medical question by seeking to ascertain whether Crowder had included the alleged 1956 health breakdown or medical advice relative thereto in applications for insurance thereafter, the examination was cut off by the Examiner upon objection by Crowder's counsel. It was then suggested that any conversation with the doctor would have been but a casual one only, such as at a social event or on the golf course, and not part of any medical treatment." (Intervenor's Brief, Page 38).

Again, Intervenor seeks to place Crowder's illness commencement in 1956. This simply is not the case. Intervenor also substitutes the word "would" for "could", and fails to inform the Court that it is citing from a bench conference requested by its own counsel. The record reads as follows (Tr. 1686-1688):

> "Q. Mr. Crowder, in 1956 you purchased some term life insurance, did you not? New England Mutual?
>
> A. I don't recall.
>
> Q. You don't recall?
>
> A. No, sir.
>
> Q. How many life insurance policies do you have?
>
> Mr. Bilger. Mr. Examiner –
>
> Mr. Kenkel: Let me approach the bench on this.
>
> (The witness was temporarily excused.)
>
> Presiding Examiner: Bench conference.
>
> (A bench conference was held.)
>
> Mr. Kenkel: When you buy life insurance you have to fill out a medical statement and give whether you

have consulted a doctor in the last five years.

Presiding Examiner: Think of this, Mr. Kenkel. He didn't say he had any physical ailments. He said he was in a nervous condition. The mere fact that his answers to a life insurance question do not contain a statement regarding his mental attitude toward something does not mean that there is a necessary contradiction to his statements here.

He said that he was perturbed by these personnel problems, the first manager was a womanizer, apparently. The second manager got into this political situation. That was the situation.

Now I don't know whether this is necessarily improper. It seems to me it is not pertinent.

Mr. Letterman: I would like to ask whether you actually have the application filed by him with the insurance company and you have it to produce in the hearing room.

Mr. Kenkel: Not at this time.

Mr. Bilger: In the first place there is something even further wrong with that in my judgment. You are obviously referring to the statement he filed that his doctor advised him to get out. Now on this insurance form this would not necessarily have been put down by him. It could have been a telephone call. It could have been a country club conversation on the golf course. It could have been a social engagement.

He said, 'I am nervous.' The doctor could easily have said, 'Get out of the radio business.'

Therefore, it is valueless.

Presiding Examiner: You are objecting to it?

Mr. Bilger: Yes, sir.

Presiding Examiner: I must sustain the objection, Mr. Kenkel. The objection is sustained on the basis of the discussion that we had while the witness was off the stand.

(The bench conference was concluded.)"

The propriety of Intervenor's argumentative use of what so obviously is not evidence and of what is in no way attributable to Crowder speaks for itself.

5. "In connection with station WHBT, Crowder's associate and long-time employee, Walter Scarbrough, testified that the station was operating smoothly, there were no financial problems, and Crowder neither complained of nor gave any indication of illness." (Intervenor's Brief, Page 40).

The fact is that Scarbrough did not testify that the station was operating smoothly, he did not testify that there were no financial problems, and he did not testify that Crowder gave no indication of illness. What he did say was that Mr. Crowder did not spend as much time at WHBT during the last year and one-half he owned that station as he did earlier. As to whether that was due to Crowder's health, Scarbrough stated he could not answer that question. Crowder did not complain to Scarbrough. (Tr. 1389-1390).

6. Intervenor refers the Court to what purports to be a list of bank deposits for Station WDEH for its first six months of operation. (Intervenor's Brief, Page 37, Footnote 16).

These data are contained in an exhibit which was marked for identification only, never having been introduced into evidence. For the most elementary of evidentiary reasons, the use thereof by Intervenor is objectionable. Nor can significance attach to "bank deposits" in any event unless the source thereof, among other things such as customer numbers and account size, is known. Here, such "bank deposits" have not been introduced into evidence, they have not been subjected to hearing test, they are on their face hearsay, they are meaningless standing alone, and they are considerably less than the $5,000 monthly billing to which Crowder testified.

Still another factual error is contained in Intervenor's Brief. On Page 4 thereof. Intervenor cites a portion of this Court's Opinion which reversed the Commission's grant of the Crowder application and required an evidentiary hearing. Therein, the following language appears:

> "In responding to Folkways' trafficking allegations in the present proceeding, Mr. Crowder represents that in 1956 he was forced by ill health to sell his interests in WHBT and WDEH: 'Upon a doctor's advice Mr. Crowder retired completely from active participation in the radio broadcast industry.' However, when he applied for Commission approval of the two sales in 1956, he failed to give this reason *though the Commission asked for a fuller statement of his reasons.* It was not until 1963 that health reasons were suggested." (Emphasis supplied).

The Commission has never asked for a fuller statement of Mr. Crowder's reason or purposes which he gave in 1956 in connection with the applications for permission to assign the licenses of Stations WHBT and WDEH. The only inquiry directed to Mr. Crowder by the Commission was that of December 17, 1965, wherein he was requested to explain the apparent inconsistency between the 50% WLIV partnership interest and the managership representation and the sale in 1956 of WHBT and WDEH for health reasons. As is noted in Appellant's brief, Mr. Crowder did so, and on January 12, 1966, the Commission granted Crowder's application, finding the "inconsistency" more apparent than real.

In other words, Crowder's purposes in selling WHBT and WDEH were before the Commission on three separate occasions in 1956. Not then, nor at any time since, has the Commission asked to have those purposes or reasons expanded. It found them to be acceptable as stated. It also found them to be acceptable in 1966 when it granted the WXXL application. And, what is more, it is finding such purposes given by proposed sellers in assignment applications acceptable now.[1]

There is something less than fair in now finding fault with Mr. Crowder's 1956 responses to application questions based upon incompleteness when the agency three separate times did not question them or ask for supplementation. Surely there is a duty reposing in this federal agency which requires it to raise questions of response adequacy to form questions at a time other than ten years hence in an evidentiary context wherein the applicant's memory is put to the test and his answers then called evasive and vague and incredible.

If Crowder's investment in WXXL made by virtue of Commission grant is to be lost, if he is to be branded a trafficker, and if he is for all practical purposes to be barred from holding a broadcast franchise for the rest of his life, no part of such decision should rest to any degree upon agency neglect or vicissitudes of its judgment. If the Commission now considers that Crowder's stated purposes in 1956 should have been expanded to state the "why's" motivating his decision to withdraw from broadcasting at that time in Harriman and Sweetwater, it should have *then* requested supplementation or notified Crowder of the inadequacy of his stated purposes. What is more, the Commission granted in 1966 Crowder's WXXL application after it was informed that Crowder's illness was such a "why".

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[1] For example, the Commission on September 15, 1967, granted an application to assign the license of Station KODL, The Dalles, Oregon, wherein the reason or purpose for requesting the assignment was "Assignor desires to dispose of radio station KODL". (See BAL-6142). On September 19, 1967, the Commission granted an application to assign the license of Station KCHE, Cherokee, Iowa, wherein the reason or purpose for requesting the assignment was "Assignor desires to withdraw from the broadcasting business." (See BAL-6103).

Intervenor refers continually to having "exploded" Crowder's "explanations" during hearing of the events which caused him to sell WHBT and WDEH in 1956, and labels as "grotesque" Appellant's position. The fact is that there are no inconsistencies in this record. There is the error Crowder made in listing his Harriman billiard parlor ownership. It is fully explored in preceding briefs and need not be re-examined here. As to his purposes in selling WHBT and WDEH, he has never been inconsistent. He said in 1956 that he wanted to withdraw from the radio business in the two communities at that time. That was the absolute truth, and he did exactly that. In 1965, he responded to the Commission's invitation to supplement his 1963 opposition pleading to the Folkways Petition to Deny (wherein he said that he sold his stations because of ill health), explaining that while he acted as General Manager of WLIV until it went on the air he was not active after that time in that station. At the hearing, he explained why he became ill in 1955, and what he did and when to assign WHBT and WDEH. He changed no answer. He altered nothing. As to precisely what his arrangement was with McCoin (which both Appellee and Intervenor choose to categorize as "private"), Crowder testified as follows (Tr. 1485-1487):

> "Q. Now, there came a time when you acquired a 50-percent interest in WLIV in Livingston?
>
> A. That is right.
>
> Q. Why did you acquire that interest?
>
> A. Can I tell this in my own way?
>
> Q. I think so.
>
> A. What happened, my brother-in-law was a car dealer in Livingston and sold the business in 1955.
>
> Q. This is R. H. McCoin?
>
> A. That is right. For some reason he decided he wanted to go into radio, get a radio station in Livingston, and he came to see me and wanted to form a

partnership. I refused. I told him I was, rather than getting in the radio business, I wanted to get out. So about the third time he came he said, 'Look, I don't know a thing about the procedure to get a construction permit. I got to have some help. If you will be a 50-percent partner with me, I would appreciate it.'

I agreed to under one condition, that I would put the station on the air, so to speak, and after that I was through, because—or in an advisory capacity in case he needed advice.

Q. All right, sir, looking at the period from the time that you agreed to assist Mr. McCoin, up until the station went on the air, and by that I assume you mean programming regularly?

A. Yes, sir. That is right.

Q. What did you do in terms of —

A. I employed consultant engineers and attorneys and purchased the equipment, the office equipment, assisted in getting on the air and I was through.

Q. What, if anything, did you do after the station went on the air until the time you sold your interests in WLIV to Mr. McCoin?

A. Just give him some advice occasionally, that is all. That is, when he asked for it.

Q. Were there occasions when you visited the station itself?

A. Yes, I visited it occasionally.

Q. How frequently were those visits, or how frequent were those visits?

A. I would say for the first year, maybe once a week. After that, maybe I would average once a month, and sometimes I wouldn't be around the place for three or four months in the busy season at the bottling plant particularly.

> Q. Did you at any time during the period you had an interest in WLIV issue any instructions to employees?
>
> A. Not one instruction; no instructions. I didn't sign any forms, any checks, nothing.
>
> Q. Did you have anything to do in connection with the reports and applications filed on behalf of the licensee of WLIV with the Commission?
>
> A. No, I didn't. Frankly, I didn't know he was still listing me as general manager, either."

And that is precisely what happened. This evidence is unrefuted, has been accepted by the Hearing Examiner, and is unchallenged by the Commission. Yet, the agency still wishes to hold Crowder accountable for McCoin's continued listing of Crowder as General Manager. Indisputably, Crowder in 1956 withdrew from the radio business in both Harriman and in Sweetwater–just as he said he wanted to do. He did so because in 1955 he became a nervous wreck because of employee problems at the Sweetwater station. Mr. Smith's 1956 statement in the Commission's files (set forth fully in Appellant's brief) confirms that Crowder did experience the employee situation about which he testified. Crowder was not active in any broadcast station operation upon a day-to-day basis after 1956 until he constructed and operated WXXL in Harriman. That is wholly consistent with his position that his nerves caused his desire to withdraw in 1956 from broadcasting. He did accommodate his brother-in-law to the degree stated above. He did act as General Manager until WLIV went on the air. After that, he did nothing of consequence. In the name of basic fairness, wherein lies misconduct amounting to trafficking?

Forgotten, it would appear by Intervenor and Appellee is the fact that in all of this record not one word appears to indicate that any of Crowder's broadcast activities resulted in anything but operation in the public interest. Not a complaint is there. They neglect also to consider the attributes of intent to serve the public which appear in Crowder's broadcast record and which the Commission in other cases has held were indicative of a lack of intent to engage in trafficking. Here would fall his improvement in the facilities of WHBT, his effort to improve WDEH even after there was an assignment of license application on file, and the testimony of Black (a Folkways' witness) that Crowder always cooperated with the Harriman school system when he owned and operated WHBT. If this broadcast record spanning more than a decade is to be outweighed in the balancing process, then the "findings" of the agency upon which it rests its trafficking conclusion must be of rational substance. Its "We don't believe Mr. Crowder" ultimate conclusion must be supported in sufficient quantum by evidence which in reason can form an adequate foundation for its denial of a franchise under the trafficking issue. To what has it looked for such support?

First of all, the agency does not accept the fact that Crowder wished to sell WHBT and WDEH because he wished to withdraw from broadcasting in the communities in which he was so engaged, a desire which was motivated by his nervous condition as set forth heretofore. It states that "Ill health was not mentioned as a reason at the time of the sale, although the application form specifically requested the reason (or the purpose) for the sale." As noted supra, the agency had Crowder's purposes before it on three separate occasions (twice for WDEH and once for WHBT). It also granted the WXXL application in 1966 after examining once again the applications to sell these two stations. The agency ignores completely the 1956 Smith corroboration of Crowder's testimony concerning WDEH managerial problems, while faulting Crowder for lack of corroborating medical evidence. In doing so, it does not mention that Crowder's testimony regarding his illness was not rebutted in any way since it first was presented to the agency and to Folkways in January, 1963, and, paradoxically, while finding a need for corroborative medical evidence from Crowder it makes the finding that if Crowder was ill he must have been precluded from all work, not just radio. Where, indeed, is the logic in that line of thought?

The agency now seeks support for its views in Crowder's having been listed as the proposed General Manager for WLIV in the original application to construct that station. Yet, it knew that such was the representation even before Crowder filed the applications to assign WHBT and WLIV in 1956. Further, in 1965 Crowder explained to the agency that he *was* the WLIV General Manager until the station went on the air. The Commission was satisfied. It granted his WXXL application. During the hearing, Crowder again explained his position with WLIV, testifying that he did not even know that McCoin kept listing him as General Manager in post-1956 WLIV applications. Nonetheless, although the Commission expressly refrained from finding trafficking as to WLIV (and for good reason, since the evidence totally supported Crowder that he had nothing to do with that station after it went on the air for all practical purposes), it still tries to hold Crowder accountable for the contents of McCoin's WLIV applications.

The agency relies also upon the mistake Crowder did make in listing his two-thirds ownership of the Harriman billiard parlor business. Enough has been said in Appellant's brief about this to reflect his view of such reliance. As to the Burn testimony, the agency decision is unclear as to how much weight, if any, was accorded to Burn's allegations. Appellee and Intervenor urge that Burn's testimony can be disregarded without injury to the necessary support for the Commission's trafficking conclusion, although the agency in its decision considered it in full. Such agency vagueness, however, has already cast upon Crowder an unfair burden even though Burn's bias, self-interest and demonstrated proclivity for misrepresentation destroys any value which otherwise might have been attached to his testimony.

Not to be overlooked are the repeated comments of both the Appellee and the Intervenor about the profits realized by Crowder from the sales of the three stations, although neither indicates nor tries to demonstrate that any or all were excessive or not in conformity with market values at sale times. Innuendo is present. Evidence tending to support the "price" element of trafficking is not.

The Intervenor dwells at some length upon facets of the testimony which the agency chose to disregard in its deliberations, making Intervenor's allegations and argument in these areas irrelevant. Into these categories would fall Intervenor's efforts during trial regarding the WXXL rate card, the WXXL program survey, and WXXL programming. None has a bearing upon trafficking, a fact the agency itself recognizes.[2]

CONCLUSION

Appellant has carried his burden of proof during the hearing in establishing that he held no intent to engage in trafficking, and that he, in fact, did not engage in trafficking. The evidence of record upon which the agency relies for its ultimate conclusion is not sufficient in either quality or quantity to support it.

Respectfully submitted,

DONALD E. BILGER
1101 17th Street, N. W.
Washington, D. C. 20036

Counsel for Appellant

Of Counsel:

Smith, Pepper, Shack & L'Heureux
Washington, D. C.

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[2] The Hearing Examiner so found, and the Commission totally ignores these arguments of Intervenor in its decision.